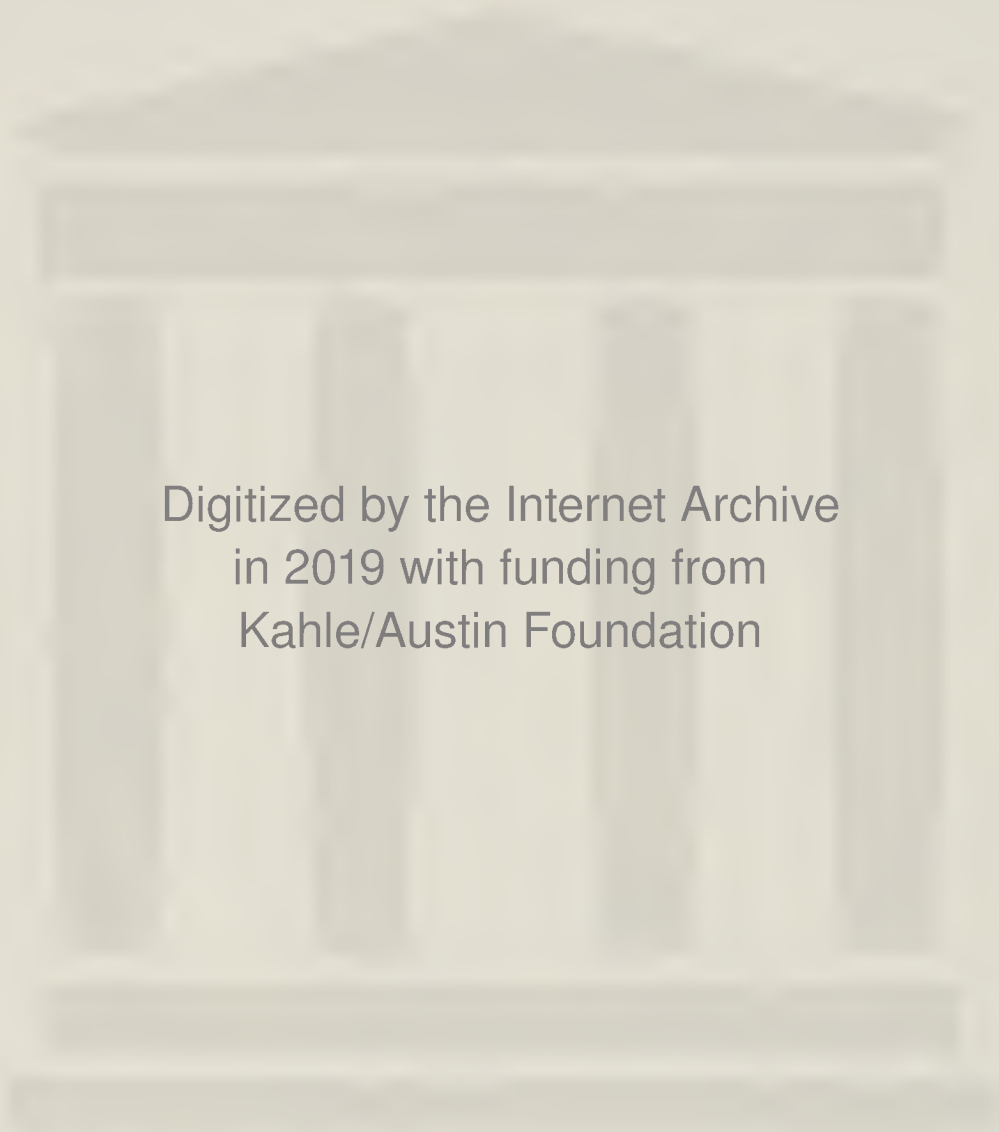


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CANADIAN ARCHIVES

DOCUMENTS

RELATING TO

# THE CONSTITUTIONAL HISTORY OF CANADA

1759-1791

Selected and Edited with Notes by

ADAM SHORTT

AND

ARTHUR G. DOUGHTY

Printed by Order of Parliament

SECOND AND REVISED EDITION BY
THE HISTORICAL DOCUMENTS PUBLICATION BOARD

PART II




OTTAWA
PRINTED BY J. de L. TACHÉ, PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1918

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RELATING TO

# THE CONSTITUTIONAL HISTORY OF CANADA

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SESSIONAL PAPER No. 18

## CARLETON TO DARTMOUTH.[1]

(N°. 1.)
*Duplicate.*

QUEBEC 23d Septr 1774.

MY LORD !

I take the first Opportunity that offers of acquainting your Lordship with my Arrival here the 18th instant, where I have had the Satisfaction of finding His Majesty's Canadian Subjects impressed with the strongest sense of The King's great Goodness towards them in the late Act of Regulation for the Government of this Province; All Ranks of People amongst them vied with each other in testifying their Gratitude and Respect, and the Desire they have by every Mark of Duty and Submission to prove themselves not undeserving of the Treatment they have met with—

* * * * * * * * *

I am with much Esteem and Respect
Your Lordship's
Most Obedient and
Most Humble Servant
GUY CARLETON

Earl of Dartmouth
One of His Majesty's
Principal Secretaries of State.

## EXTRACT OF A LETTER FROM GENERAL GAGE TO GENERAL CARLETON DATED BOSTON SEPTR. 4TH, 1774.[2]

"The present Situation of Affairs in this Province obliges me to collect "all the Force in my Power ; I have therefore sent Transports for the 10th "and 52d Regiments to bring them to this Place, at the same Time I submit "to you, whether you think any Thing is to be dreaded from the Absence "of these Corps, internally in the Province of Quebec during the Winter ; "for as these Regiments will come down the River so late in the Year, and "may be replaced early in the Spring, I imagine no Danger can be appre- "hended from without. If therefore you think the Fusileers at Quebec, and "the Part of the 26th at Montreal, with small Detachments from them at "Trois Rivieres and Chambli, can preserve Peace and good Order in the "Province, I am to beg you will order the 10th and 52d Regiments to embark "without Delay on board the Transports, for you will think with me they "will have no Time to spare in coming down the River St. Laurence.

"As I must look forward to the worst, from the apparent Disposition "of the People here, I am to ask your Opinion, whether a Body of Canadians

[1] Canadian Archives, Q 10, p. 120. After the passing of the Quebec Act, Carleton left early in July to resume his position as Governor of the enlarged Province of Quebec under its new constitution.

[2] Canadian Archives, Q 10, p. 122. This was sent as an enclosure with the previous despatch, and is one of numerous documents showing immediate preparation on the part of the English authorities, after the passing of the Quebec Act, to make use of the Canadians and Indians in connection with the colonial troubles to the south.

"and Indians might be collected, and confided in, for the Service in this "Country, should matters come to Extremities ; and on what Plan, and "what Measures would be most efficacious to raise them, and for them to "form a Junction with the King's Forces in this Province ?"

G.C.

Endorsed :—Extract of a Letter from
General Gage to General
Carleton dated Boston Sept[r]
4[th] 1774.
In Governor Carleton's
of the 23 [rd] Sept[r] N° 1

## EXTRACT OF GENERAL CARLETON'S ANSWER TO GENL GAGE DATED QUEBEC 20TH SEPTR 1774.[1]

"Your Express reached this Place yesterday Evening, about twenty "Hours after my Arrival ; Pilots are sent down the River, the 10[th] and 52[nd] "shall be ready to embark at a Moment's Notice, and as you directed"—

"The Canadians have testified to me the strongest marks of Joy, and "Gratitude, and Fidelity to the King, and to His Government, for the late "Arrangements made at Home in their Favor ; a Canadian Regiment would "compleat their Happiness, which in Time of Need might be augmented to "two, three, or more Battalions, tho' for the Satisfaction of the Province, "and 'till the Kings Service might require more, one would be sufficient, and "I am convinced their Fidelity and Zeal might be depended on; should this "Measure be at length adopted (which I have long since Recommended)[2] "'tis essentially necessary their Appointments should be the same as the rest "of the Infantry, with half pay, in Case they should be reduced ; the "Savages of this Province, I hear, are in very good Humor, a Canadian "Battalion would be a great Motive, and go far to influence them, but you "know what sort of People they are"—

G. C.

Endorsed :—Extract of General Carleton's
Answer to General Gage
dated Quebec 20[th] Sept[r] 1774.
In Governor Carleton's
of the 23[d] Sepr. N° 1

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[1] Canadian Archives, Q 10, p. 123. This was also enclosed in Carleton's despatch of 23rd Sept., 1774.

[2] See, among others, his letter to Gage of Feb. 15th, 1767; p. 280. Also his letter to Shelburne of Nov. 25th, 1767; p. 281.

SESSIONAL PAPER No. 18

## DARTMOUTH TO CARLETON.[1]

WHITEHALL 10th Decr 1774

GOVERNOR CARLETON

SIR,

I have received your Dispatch of the 23d of Septr acquainting me with your Arrival at Quebec. and that you found His Majesty's Canadian Subjects impressed with a just Sense of His Majestys Goodness to them, and highly satisfied and pleased with the Regulations adopted for the future Government of the Colony—

As you are silent as to the Sentiments of His Majesty's Natural born Subjects in Canada respecting the late Act, I am not at liberty to conclude that they entertain the same opinion of it, but the King trusts that when the Provisions of it have taken place and His Majesty's gracious Intentions with respect to the Plan of Judicature[2] that is to be established are well known, prejudices which popular Clamour has excited, will cease, and that His Majesty's Subjects of every description will see and be convinced of the Equity and good Policy of the Bill.

It will be your Care, Sir, at the same time you express to the King's new adopted Subjects His Majesty's gracious approbation of the Affection and Respect they have shewn for His Government, to endeavour by every Argument which your own good sense will suggest to you, to persuade the natural born subjects of the justice & propriety of the present form of Government and of the attention that has been shewn to their Interests not only in the adoption of the English Laws, as far as it was consistent with what was due to the just Claims and moderate. Wishes of the Canadians, but in the opening to the British Merchant, by an Extension of the Province, so many new Channels of important Commerce.

You will have seen, by the public Prints, that Mr. Hey has been elected for Sandwich in the new Parliament and will naturally conclude that he has no Intention of returning to Quebec ; but I have the Satisfaction to

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[1] Canadian Archives, Q 10, p. 125.

[2] It was intended to furnish an ordinance for the establishment of courts in Canada and send it out to be enacted by the Council. Two plans were proposed, as we learn from a paragraph in Under Secretary Pownall's note to Lord Dartmouth of July 17th, 1774. "I have also conversed with Mr. Hey on the Plan of judicature for Quebec he thinks my plan will do as well as his I am convinced his ought to be preferred; we both agree that anything that falls short of, goes beyond, or halts between either will be improper." M 385, p. 425. Of these only the one by Hey appears to have been actually drawn out, as we learn from Hey's letter to Dartmouth. "My Lord—I did myself the honour to call at your Lordships house with the draught of an Ordinance for establishing Courts of Justice at Quebec, and thro'out the Province, which I most sincerely wish may have the good fortune to be better thought of by your Lordship than I will freely confess it is by the author of it—without any affectation of modesty which appears to me as bad as any other sort of affectation, I must own it is a work beyond my abilities & somehow or other I have had the ill luck to have had very little assistance in it except from Mr. Jackson indeed not any. & He is at present much taken up with the business of the Court of Chancery." M 385, p. 490. The draught of an ordinance here referred to, is the one given in the same volume, at p. 373, and endorsed, "Epitome of a proposed Ordinance for establishing Courts of Justice in the Province of Quebec." The complete ordinance as drawn is given below, p. 637.

acquaint you, that is not the case, and that he is resolved to return to Quebec in the Character of Chief Justice although he should be under the necessity of relinquishing his Seat in Parliament which however we hope and think may be avoided, and I mention this with the greater Pleasure, knowing how great a satisfaction it must be to you to have his advice and opinion upon the many important Objects that remain to be provided for.[1]

It is very much to be wished that the season of the Year would admit of his being the Bearer of your Commission and Instructions, and of the Notifications of His Majesty's Pleasure with regard to the Variety of Arrangements which are to be made ; but as that cannot be, I propose to send them to you by the next New York Packet under cover to Lieut Gov$^{r}$ Colden, with Directions to him to see them conveyed to you from New York by a proper Messenger and with all possible Dispatch.

I am &c$^{a}$
DARTMOUTH.

Endorsed :—Dra$^{t}$ to Gov$^{r}$ Carleton
10$^{th}$ December 1774

## CARLETON TO DARTMOUTH.[2]

(N°. 3.)

QUEBEC 11$^{th}$ November 1774.

MY LORD !—Soon after my Arrival here, I informed Your Lordship of the Gratefull Sense, The King's Canadian Subjects, in this Part of the Province entertained of the Acts of Parliament passed in their Favour during the last Session ; those more remote have since, in all their Letters and Addresses, expressed the same Sentiments of Gratitude and Attachment to His Majesty's Royal Person and Government as well as to the British Interests.

The most respectable part of the English residing at this Place, notwithstanding many Letters received from Home, advising them to pursue a different Course, likewise presented an Address expressive of their Wish to see universal Harmony and a dutifull Submission to Government continue to be the Characteristic of the Inhabitants of this Province, and assuring me, that nothing should be wanting, upon their Parts, to promote so desirable an End ; I believe, most of those, who signed this Address, were disposed to act up to their Declaration, which probably would have been followed by those, who did not, if their Brethren at Montreal had not adopted very different Measures.

Whether the Minds of the latter are of a more turbulent Turn, or that they caught the Fire from some Colonists settled among them, or in reality Letters were received from the General Congress, as reported, I know not ;

[1] Wm. Hey returned to Canada as Chief Justice in April, 1775.
[2] Canadian Archives, Q 11, p. 11.

Certain it is however, that shortly after the said Congress had published in all the American Papers their approbation of the Suffolk County Resolves[1] in the Massachusetts, a Report was spread at Montreal, that Letters of Importance had been received from the General Congress, all the British there flocked to the Coffee House to hear the News, Grievances were publicly talked of, and various Ways for obtaining Redress proposed, but that Government might not come to a true Knowledge of their Intentions, a Meeting was appointed at the House of a Person then absent, followed by several others at the same Place, and a Committee of four Named, consisting of Mr. Walker, Mr. Todd, Mr. Price, and Mr. Blake, to take Care of their Interests, and prepare Plans for Redress.

Mr. Walker, whose Warmth of Temper brought on him, some Time before my Appointment to this Command, the very cruel and every Way unjustifiable Revenge,[2] which made so much Noise, now takes the Lead, and is not unmindful of his Friend Mr. Maseres upon the Occasion.

Their Plans being prepared, and a Subscription commenced, the Committee set out for Quebec, attended in Form by their Secretary, a Nephew of Mr. Walker's, and by Profession a Lawyer ; immediately upon their Arrival here, their Emissaries having prepared the Way, an Anonimous Summons was posted up in the Coffee House for all the British Subjects to meet at a particular Tavern, and a Messenger sent round with a verbal Notice to such as might not have seen the written Summons ; At this first Meeting a Committee of seven, consisting of Mr. John Paterson, since gone to London, Mr. Zachariah Macaulay, Mr. John Lees Senior, said to intend going Home this Fall, Mr. John Aitkin, their Treasurer, Mr. Randal Meredith, Mr. John Welles, and Mr. Peter Fargues, was appointed to prepare and adjust Matters with those of Montreal ; several discreet People at this Place and Montreal declined attending those Meetings, as soon as they discovered what they aimed at.

There have been several Town Meetings since, as they are pleased to stile them, and Meetings of the joint Committees, at which, tis said, they have resolved to write Letters of Thanks to the Lord Mayor and Corporation of London,[3] to some of the Merchants in the City, and to Mr. Maseres, for having taken the Province under their Protection, and praying a Continuance of their zealous Endeavours in so good a Cause ; they intend a handsome Present in Cash to Mr. Maseres, with the Promise of a larger Sum, in Case he succeeds ; Petitions are likewise to be presented to The King, to the Lords, and to the Commons,[4] but of all this I speak doubtfully, as they have taken uncommon Pains to keep their whole Proceedings from my knowledge.

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[1] These were adopted on Sept. 9th, 1774.

[2] The chief documents dealing with the Walker outrage are given in the "Report on Canadian Archives," for 1888, p. 1.

[3] "On the 22nd of June, the Lord Mayor, attended by several aldermen, the recorder, and upwards of one hundred and fifty of the common council, went up with an address and petition to the King, supplicating his Majesty not to give his assent to the bill." Cavendish "Debates," &c. Preface, p. IV.

[4] These petitions were presented and are given immediately following this despatch.

This much however is certain, that the Canadians feel some Uneasiness at these Proceedings ; they are surprised that such Meetings and nocturnal Cabals should be suffered to exert all their Efforts to disturb the Minds of the People by false and seditious Reports, calculated to throw this Province into the same Disorders that reign in other Parts of this Continent; They express some Impatience and Indignation at being solicited to join in such Proceedings, and are not without their Fears, that some of their Countrymen, under the Awe of menacing Creditors, and others, from Ignorance, may have been induced to put their Hands to a Paper, which, they are assured, is intended to secure their Lands and Property, and take from the Governor the Power of seizing them to his own Use, or sending them and their Families up the Country among the Savages, or waging War, at his own Pleasure, upon the Bostonians ; in short to relieve them from the Oppressions and Slavery imposed upon them by those Acts of Parliament; They are the more apprehensive these and such like Reports may have had Effect upon some weak and ignorant People, that from the Precision necessary in the Translation, the Acts themselves have not as yet been promulgated.

I have assured the Canadians, that such Proceedings could never affect the late Measures taken in their Favor, nor did I believe, they ever would succeed with Government upon any Occasion, so that they might remain in perfect Tranquility upon that Account; Notwithstanding my thorough Conviction, of the Assurances, I have given them, and that all these Town Meetings, all the Reports, breathing that same Spirit, so plentifully gone forth through the neighbouring Provinces, can for the present only excite a trifling and momentary Agitation, I cannot but Regret, such Examples should be set the People of this Province, and think, Government cannot guard too much, or too soon, against the Consequences of an Infection, imported daily, warmly Recommended, and spread abroad by the Colonists here, and indeed by some from Europe, not less violent than the Americans.

I am informed, all Persons from Boston for Canada are searched for Letters, and strictly examined, if they have any verbal Message from General Gage for me, so that I am not likely to hear from the General, before the Navigation opens next Summer.

I am with much Esteem and Respect
Your Lordship's
Most Obedient and
Most Humble Servant
GUY CARLETON

Earl of Dartmouth
One of His Majesty's
Principal Secretaries of State.

SESSIONAL PAPER No. 18

## PETITIONS FOR THE REPEAL OF THE QUEBEC ACT.[1]

### TO THE KING'S MOST EXCELLENT MAJESTY.

THE PETITION of your Majesty's most loyal and dutiful your ancient Subjects settled in the Province of QUEBEC,

### MOST HUMBLY SHEWETH

THAT We upon the Faith of your Sacred Majesty's Royal Proclamation bearing Date the Seventh Day of October which was in the Year of Our Lord One thousand seven Hundred and Sixty three Did come and Settle ourselves in the said Province purchasing Houses and Lands and carrying on extensive Trade Commerce and Agriculture whereby the Value of the Land and Wealth of it's Inhabitants are more than doubled during all which Time, We humbly crave leave to say that we have paid a ready and dutiful Obedience to Government and have lived in Peace and Amity with your Majesty's new Subjects. Nevertheless we find and with unutterable Grief presume to say that by a late Act of Parliament intitled "An Act for the making more effectual Provision for the Government of the Province of QUEBEC in North America" We are deprived of the Franchises granted by Your Majesty's Royal Predecessors and by us inherited from our Forefathers THAT We have lost the Protection of the English Laws so universally admired for their Wisdom and Lenity and which we have ever held in the highest Veneration and in their Stead the Laws of CANADA are to be introduced to which we are utter Strangers disgraceful to us as Britons and in their Consequences ruinous to our Properties as we thereby lose the invaluable Privilege of TRIAL by JURIES. THAT in Matters of a Criminal Nature the HABEAS CORPUS Act is dissolved and we are Subjected to arbitrary Fines and Imprisonment at the Will of the Governor and Council who may at Pleasure render the Certainty of the Criminal Laws of no Effect by the great Power that is granted to them of making Alterations in the same.

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[1] Canadian Archives, Q 11, p. 98. This is also given in Maseres' "An Account of the Proceedings" &c., p. 239. Only the petition to the King is given in the State Papers, but those to the Lords and Commons are also given by Maseres. The British element in the Province, for the most part, on learning the nature of the Quebec Act, which deprived them of the protection of the writ of Habeas Corpus and of trial by jury, under the restored French Law, set about procuring petitions for its repeal or amendment. They formally appointed Maseres as their agent in London, and to him they sent the three petitions to the King, Lords, and Commons. "These petitions were received by Mr. Maseres about the 12th or 13th of last January, 1775; and the first of them, that to the King's majesty, was delivered by him to the Earl of Dartmouth, his majesty's secretary of state for America, on the 18th of the same month; and those to the House of Lords and House of Commons were some time after delivered to the Lord Camden and Sir George Savile, who, approving the contents of them, undertook to present them to their respective houses of parliament." "An Account of the Proceedings," &c., p. 238.

WE therefore MOST HUMBLY IMPLORE your Majesty to take our unhappy state into your Royal Consideration and grant us such Relief as your Majesty in your Royal Wisdom shall think meet.

And your Petitioners as in Duty bound
Will ever Pray.[1]

Quebec 12th November 1774.

| | | | |
|---|---|---|---|
| Quebec Committee | Zachary Macaulay | Edwd Manwaring | Davd Salesby Franks |
| | John Aitkin | Michael Flanagan | John Richardson. Junr |
| | Jno Paterson | J. Melvin | James Leach |
| | Randle Meredith | Geo. Munro | Ezekiel Solomons |
| | John Lees | Jas Hanna | James Perry |
| | John Welles | Joseph Torrey | J. Beek |
| | S. Fargues | Thos Walker, junr | Lawrence Ermatinger |
| | John McCord | Jas Dyer White | Simon McTavish |
| | Chas. Grant | Jno Bell | J. Pullman |
| | Robert Woolsey | Andrew M'Gill | James Frazer |
| | Nicholas Bayard | Sam: Holmes | G. Young |
| | John Painter | James Blake | Willm Ashby |
| | Thomas McCord | James Noel | Gavin Laurie |
| | Henry Grebassa | Thomas McMurray | Phill. Brickman |
| | Robt. Willcocks | Allan Paterson | Benj. Holborn |
| | John Renaud | James Symington | Joseph Borrel |
| | Christy Cramer | Abram Holmes | John Connolly |
| | Geo: Gregory | John Neagle | John Durocher |
| | Lewis Chaperon | Peter Arnoldi | B. Janis |
| | Frederick Petry | Dan[l] Robertson | J. Joran |
| | James Cuming | Alexr Milmine | Jacob Maurer |
| | William Laing | Thos Fraser | Simon Levy |
| | George Jenkins | A. Porteous | Edward Chinn |
| | Francis Smith | Joseph Ingo | Richd McNeall |
| | Alexander Wallace | Adam Scott | Robt. Cruickshanks |
| | | Jas Finlay | John Comfort |
| Montreal Committee | Thomas Walker | Pat McClement | Adam Wentsel |
| | James Price | Wm Pantree | Allan McFarlain |
| | John Blake | Jacob Bittez | Jacob Vander Heyden |
| | Isaac Todd | Leach Smith | Hinrick Gonnerman |
| | Alexr Paterson | John Saul | John Hare, Junr |
| | Jno Porteous | Francis Anderson | Geo. Wright Knowles |
| | Rich'd Dobie | Simon Fraser | Benjn Frobisher |
| | Geo. Measam | John Ross | Wm Murray |
| | Sam[l] Jacobs | John McCluer | Jas Anderson |
| | Nicholas Brown | James Woods | John Trotter |
| | Michl. Morin | John Lees | Christ. Chron |
| | William Kay | Lemuel Bowles | Willm England |
| | John Lilly | Thomas Davidson | Meshach Leeng |

[1]The spelling of the names has been revised from the lists as given in "An Account of the Proceedings," &c., pp. 241, 248, 258.

SESSIONAL PAPER No. 18

John Sunderland
J. Grant
James Morrison
Jas Sinclair
John Chisholm
James Jeffry
Robt. McFie
Francis Atkinson
David Shoolbred
Jonas Clarke Minot
Godfrey King
George Davison
George King
John Lynd
Caleb Thorne
John Lees, junr
Robt. Jackson
Hugh Ritchie
Alexander Lawson
Charles Dailey
Lazarus David
D. Bouthillier
Richd Walker
Patrick O'Donell
Archd Lawford
Simon Fraser Junr
Richd Vincent
Daniel Cameron
James Galbraith
Roderick McLeod
John White Swift
John Bondfield
Will: Callander
Dad Geddes
Sam[1] Morrison
John Thomson
Alexander Hay
Jas Doig
Joseph Bindon
Andrew Hays
Geo: Singleton
Jno Stonhouse
John Kay
Josiah Bleakley
Aaron Hart
Levy Solomons
Thomas Boyd
John Mittleberger
Solomon Mittleberger
Isaac Judah
Peter Mcfarlane
Jas May
Jacob Schieffelin
Benaiah Gibb
John George Walk
Michael Phillips
C. Dumoulin
Francois Dumoulin
Duncan Cumming
William Haywood
Johan Nikal
Sein Mann
Robt. McCay
Charles Le Mardert
James Robinson
Jean Bernard
Alexr Fraser
Malcolm ffraser
John McCord Junr
Henry Dunn

(Original)

Recd, 22d January 1775.

## PETITIONS TO THE LORDS.[1]

"To the Lords Spiritual and Temporal in Parliament assembled.

"The Petition of his Majesty's loyal and dutiful his ancient Subjects "settled in the Province of Quebeck,

"Humbly sheweth,

"That since the commencement of civil government in this province, "your lordships' humble petitioners, under the protection of English laws "granted us by his sacred majesty's royal proclamation, bearing date "the seventh day of October, which was in the year of our Lord one thousand "seven hundred and sixty-three, have been encouraged to adventure their "properties in trade, estates and agriculture, to a very considerable amount, "thereby rendering the province a valuable acquisition to Great-Britain : "That, to their inexpressible grief, they find, by an act of parliament "intitled, *An act for making more effectual provision for the government of "the province of Quebeck in North-America*," they are deprived of the habeas "corpus act and trials by juries, are subjected to arbitrary fines and impri- "sonment, and liable to be tried both in civil cases and matters of a criminal "nature, not by known and permanent laws, but by ordinances and edicts "which the governour and council are impowered to make void at their will "and pleasure, which must render our persons and properties insecure, and

[1] "An Account of the Proceedings," &c., p. 246. This bears the same signatures as the petition to the King.

"has already deeply wounded the credit of the country, and confined our "views in trade to very narrow limits.

"In this cruel state of apprehension and uncertainty, we humbly implore "your lordships' favourable interposition, as the hereditary guardians of the "rights of the people, that the said act may be repealed or amended, and "that your humble petitioners may enjoy their constitutional rights, privi- "leges and franchises heretofore granted to all his majesty's dutiful subjects.

"And your petitioners, as in duty bound, will ever pray.

"Quebeck, 12th Nov. 1774."

## PETITION TO THE COMMONS.[1]

"To the Honourable the Commons of Great-Britain in Parliament assembled.

"The humble Petition and Memorial of his Majesty's ancient Subjects "the Seigneurs, Freeholders, Merchants, Traders, and others settled in "his Majesty's Province of Quebeck,

"Sheweth,

"That, under the sanction of his majesty's royal proclamation, bearing "date the seventh day of October, in the year of our Lord one thousand "seven hundred and sixty-three, which graciously promises to all persons "inhabiting in, or resorting to, this province, his royal protection for the "enjoyment of the benefit of the laws of the realm of England, until assemblies "should be called therein, they did come and settle themselves in this "province, having entrusted their own properties, as well as very consider- "able sums of their friends, in goods and merchandize, from Great-Britain, "and entrusted the same into the hands of the Canadians, as well for the "purpose of internal trade in the province, as for outsets in carrying on the "traffick of furs and peltries in the Indian countries and fisheries below "Quebeck, many of them having purchased lands and houses, and been "employed in agriculture, and the exportation of grain and other produce "to foreign markets, to the great benefit and emolument of the said pro- "vince, which has flourished chiefly by the industry and enterprising spirit "of the said subjects, who, under the protection of British laws, and by the "assistance of annual supplies of British manufactures, and other goods and "merchandize obtained upon credit from the merchants of Great-Britain, "have been enabled to carry on at least four parts in five of all the imports "and exports which are principally made in British bottoms, the latter "consisting of furs, peltries, wheat, fish, oil, pot-ash, lumber, and other "country produce : and for the more convenient carrying on the said trade "and commerce, they have built wharfs and store-houses at a very great "expense, insomuch that the property, real and personal, now in British "hands, or by them entrusted to Canadians at a long credit, is one half of "the whole value of the province, exclusive of the wealth of the different "communities ; which your petitioners have in part set forth in the humble "petition to his most excellent majesty, dated at Quebeck the thirty-first "day of December which was in the year of our Lord one thousand seven

[1] "An Account of the Proceedings" &c., p. 254. This also bears the same list of names as the other petitions.

"hundred and seventy-three;[1] humbly praying, that he would be graciously "pleased to require his governour or commander in chief to call a general assem- "bly, in such manner, and of such constitution and form, as to his majesty's "royal wisdom should seem best adapted to secure the peace, welfare, and good "government of this province. Wherefore with deep concern they observe, "that in certain examinations taken before your honourable house, the "British subjects here have been grossly abused and misrepresented, as "well as to their numbers as in their importance in this province. For the "number of the new subjects has, we humbly conceive, been greatly exaggerat- "ed, it being, by the last computation, about seventy-five thousand; whereas, 'by an enumeration of the British subjects, they amount at this time to "upwards of three thousand souls, besides many that we cannot immediately "ascertain that are dispersed in the Indian countries carrying on traffick "with the savages, besides the merchants and traders with their families "settled at Detroit and its dependencies, and at the fisheries below Quebeck. "And whereas an act of parliament has lately passed, intituled, "*An act "for the making more effectual provision for the government of the province of "Quebeck in North-America*," which is said to have been passed upon the "principles of humanity and justice, and at the pressing instance and "request of the new subjects, signified to his majesty by an humble petition[2] "setting forth their dislike to the British laws and form of government, and "praying, in the name of all the inhabitants and citizens of the province, "to have the French institutes in their stead, and a total abolition of trials "by jury, together with a capacity of holding places of honor and trust "in common with his majesty's ancient subjects. We crave leave to inform "your honourable house, that the said petition was never imparted to the "inhabitants in general (that is) the freeholders, merchants and traders, "who are equally alarmed with us at the Canadian laws being to take place, but "was in a secret manner carried about and signed by a few of the seigneurs, "chevaliers, advocates, and others in their confidence, at the suggestions, "and under the influence of their priests ; who, under colour of French "laws, have obtained an act of parliament which deprives his majesty's "ancient subjects of all their rights and franchises, destroys the Habeas "Corpus act, and the inestimable privilege of trial by juries, the only "security against the venality of a corrupt judge, and gives unlimited power "to the governour and council to alter the criminal laws ; which act has "already struck a damp upon the credit of the country, and alarmed all "your humble petitioners with the just apprehensions of arbitrary fines "and imprisonment, and which, if it takes place, will oblige them to quit "the province, or, in the end, it must accomplish their ruin, and impoverish "or hurt their generous creditors, the merchants in Great-Britain, &c. "To prevent which, your petitioners most humbly pray that the said act "may be repealed or amended, and that they may have the benefit and

[1] See p. 495.
[2] See p. 554.

"protection of the English laws, in so far as related to personal property ; "and that their liberty may be ascertained according to their ancient "constitutional rights and privileges heretofore granted to all his majesty's "dutiful subjects throughout the British empire.

"And your petitioners, as in duty bound, will ever pray.

"Quebeck, 12th Nov. 1774."

## INSTRUCTIONS TO GOVERNOR CARLETON, 1775.[1]

George R.

[L.S.]

Instructions to Our Trusty and Welbeloved Guy Carleton Esquire, Our Captain General and Governor in Chief in, and over Our Province of Quebec in America and of all Our Territories dependent thereupon. Given at Our Court at S$^{t}$ James's the Third Day of January 1775. In the Fifteenth year of Our Reign.

First, With these Our Instructions you will receive Our Commission under Our Great Seal of Great Britain, constituting you Our Captain General

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[1] Canadian Archives, M 230, p. 116. There are several memoranda among the Dartmouth Papers, giving suggestions or draughts of various parts of the new Instructions for the Governor of Quebec. Most of these are without name or date. Some of them are referred to in connection with the articles of the instructions to which they relate. Among them is one endorsed, "Minutes of Quebec Instructions," which indicates some of the chief points to be considered in framing the Instructions. It is as follows:—(the numbers of the articles in the Instructions which embody the features indicated are given within brackets after each head):

"Quebec—Habeas Corpus writ (13).

"Supreme Court of criminal Jurisdiction called K$^{s}$ Bench. 2 Districts, Quebec & Montreal C. of Com. Pleas in each for civil suits 3 Judges in each. 2 Nat. Born & 1 Canadian. 1 C. of K's B. in each of the 5 out Posts. 1 Judge, & 1 Canad. Assessor in Treason murder or Cap. Felony only to have power to commit Council to be Court of appeal where above £10 final to £500, above appeal to K. in Council, all Commissions, during pleasure. (15).

"Gov$^{r}$ not to displace officers without representation. (17).

"No ecclesiast. Jurisd. to be exercised without Licence. No person to be ordained without Licence. (21, sec. 2).

"Prot. Tythes to be paid to Rec$^{r}$ Gen$^{l}$ for support of Protestant Clergy. (21. sec. 5).

"Seminaries of Qu. & Montr. to remain.—(21, sec. 11).

"All other Communities (except Jesuits) to remain as at present—not to fill up except Nuns." (21, sec. 12). M. 385, p. 372.

On Dec. 5, 1774, the Board of Trade submitted to the King the draught of a new Commission for Governor Carleton with such formal changes only, as compared with the last, as were required by the terms of the Quebec Act. On Dec. 22nd the Board of Trade laid before the King the draught of the General Instructions for Governor Carleton. "This draught," they say, "contains not only such Instructions as are usually given to other governors, so far as the same are applicable to this Province under its New Constitution of Government; but also such other directions for the establishment of Judicature; the reform and regulation of Ecclesiastical matters; and the arrangements proper to be made in respect to the Coast of Labrador, and the interior Country, as appear to us to be necessary in consequence of the Act passed in the last Session of the late Parliament; it also contains an appointment of the Council conformable to that Act, and directs the provisions to be made for the support of the Civil Establishment of Government.

"We also humbly beg leave to lay before your Majesty a draught of such Instructions to your Majesty's Governor of Quebec as are usually given to the governors of your Majesty's other Colonies respecting the observance and the execution of the Laws for regulating the Plantation Trade.

"All which is most humbly submitted, Whitshed Keene, C. F. Greville, Soame Jenyns, W. Joliffe." Q 18 B., p. 108.

On Jan. 7th, 1775, Dartmouth sent a despatch to Carleton enclosing his Commission and Instructions. After repeating the statements of the Board of Trade, given above, he adds, "These documents contain such arrangements, in consequence of the Act of the 14th of his present Majesty, for providing for the more effectual Government of the Province of Quebec, as were necessary to accompany the new Commission, & also the outlines of that System of Judicature, & general Regulation of Ecclesiastical Affairs, which the King thinks fit should be provided for by Ordinances of the Legislative Council. Q 11, p. 59.

and Governor in Chief in, and over Our Province of Quebec in America, and all Our Territories thereunto belonging, as the said Province and Territories are bounded and described in, and by the said Commission. You are therefore to take upon you the Execution of the Office and Trust We have reposed in you, and the Administration of the Government, and to do and execute all things in due manner, that shall belong to your Command according to the several Powers and Authorities of our said Commission under Our Great Seal of Great Britain, and these Our Instructions to you, or according to such further Powers and Instructions, as shall at any time hereafter be granted or appointed you under Our Signet and Sign Manual, or by Our Order in Our Privy Council; and you are to call together at Quebec, (Which We do hereby appoint to be the place of your ordinary Residence, and the principal Seat of Government,) the following persons whom We do hereby, with the Advice of Our Privy Council, constitute and appoint to be Our Council for the Affairs of Our said Province of Quebec, and the Territories thereunto belonging ; Viz. Hector Theophilus Cramahé Esquire, Our Lieutenant Governor of Our said Province or Our Lieutenant Governor of Our said Province for the time being, Our Chief Justice of Our Province for the time being, Hugh Finlay, Thomas Dunn, James Cuthbert, Colin Drummond, Francis Les Vesques ; Edward Harrison, John Collins, Adam Mabean,—De Lery,—S$^{t}$ Ours, Picodyde Contrecoeur, Our Secretary of Our said Province for the time being, George Alsopp,—De La Naudiére, La Corne S$^{t}$ Luc, Alexander Johnstone, Conrad Gugy,—Bellestres,—Rigauville, and John Fraser Esquires ; All and every of which Person and Persons shall hold and enjoy his & their Office and Offices of Councillor or Councillors for Our said Province of Quebec, for and during Our Will and Pleasure, and his or their Residence within Our said Province, and not otherwise.

2. It is Our further Will and Pleasure, that any five of the said Council shall constitute a Board of Council for transacting all Business, in which their Advice and consent may be requisite, Acts of Legislation only excepted, (in which Case you are not to act without a Majority of the whole,) And it is Our further Will and Pleasure, that the Members of Our said Council shall have and enjoy all the Powers, Privileges, and Emoluments enjoyed by the Members of Our Councils in Our other Plantations ; and also such others as are contained and directed in Our said Commission under Our Great Seal of Great Britain, and in these Our Instructions to you ; and that they shall meet together at such time and times, place and places, as you in your discretion shall think necessary, except when they meet for the purpose of Legislation, in which Case they are to be assembled at the Town of Quebec only.

3. And You are with all due and usual Solemnity to cause Our said Commission to be read and published at the said Meeting of Our Council, which being done, you shall then take and also administer to each of the Members of Our said Council, (not being a Canadian, professing the Religion

of the Church of Rome,) the Oaths mentioned in an Act passed in the first year of the Reign of His Majesty King George the first, intituled, "An Act "for the further Security of His Majesty's Person, and Government, and the "Succession of the Crown in the Heirs of the late Princess Sophia, being "Protestants ; and for extinguishing the hopes of the pretended Prince of "Wales, and his open and secret Abettors," as altered and explained by an Act passed in the sixth year of Our Reign, intituled, "An Act for altering "the Oath of Abjuration, and the Assurance ; and for amending so much of "an Act of the seventh year of Her late Majesty Queen Anne, intituled, An "Act for the Improvement of the Union of two Kingdoms, as, after the time "therein limited, requires the delivery of certain Lists and Copies, therein "mentioned, to persons indicted of High Treason, or Misprision of Treason;" as also make and subscribe, and cause them to make and subscribe the declaration mentioned in an Act of Parliament made in the twenty fifth Year of the Reign of King Charles the second, intituled, "An Act for "preventing Dangers, which may happen from Popish Recusants;" and you and every one of them are likewise to take an Oath for the due Execution of your and their Places and Trusts, with regard to your and their equal and impartial Administration of Justice ; and you are also to take the Oath required by an Act passed in the seventh and eighth years of the Reign of King William the third, to be taken by Governors of Plantations to do their utmost, that the Laws relating to the Plantations be observed.

4. And Whereas by an Act passed in the fourteenth year of Our Reign, intituled, "An Act for making more effectual provision for the Government "of the Province of Quebec in North America," it is enacted and provided, that no person, professing the Religion of the Church of Rome, and residing in the said Province, shall be obliged to take the Oath of Supremacy required by an Act passed in the first year of the Reign of Queen Elizabeth, or any other Oaths substituted by any other Act in the place thereof ; but that every such Person, who by the said Statute is required to take the Oaths therein mentioned, shall be obliged, and is thereby required, under certain Penalties, to take and subscribe an Oath in the form and Words therein prescribed, and set down ; It is therefore Our Will and Pleasure, that you do administer to each and every Member of Our said Council, being a Canadian, and professing the Religion of the Church of Rome, and cause each of them severally to take and subscribe the Oath mentioned in the said Act passed in the fourteenth year of Our Reign, intituled ; "An Act for making more effectual provision for the Government of the "Province of Quebec in North America ;" and also cause them severally to take an Oath for the due Execution of their places and Trusts, and for their equal and impartial administration of Justice.

5. And that We may be always informed of the Names and Characters of Persons fit to supply the Vacancies, which may happen in Our said Council, You are from time to time to transmit to Us, by one of Our Principal Secretaries of State, the names and Characters of such persons, Inhabi-

tants of Our said Colony, whom you shall esteem the best qualified for that Trust ; And you are also to transmit a duplicate of the said Account to Our Commissioners for Trade and Plantations, for their Information.

6. And if it shall at any time happen, that by the death or departure out of Our said Province, of any of Our said Councillors, there shall be a Vacancy in Our said Council, Our Will and Pleasure is ; that you signify the same to Us by one of Our principal Secretaries of State, and to Our Commissioners for Trade and Plantations, by the first Opportunity, that we may by Warrant under Our Signet and Sign Manual, and with the Advice of Our Privy Council, constitute and appoint others in their stead.

7. You are forthwith to communicate such and so many of these Our Instructions to Our said Council, wherein their Advice and Consent are mentioned to be requisite, as likewise all such others from time to time, as you shall find convenient for Our Service to be imparted to them.

8. You are to permit the Members of Our said Council to have and Enjoy Freedom of Debate and vote in all Affairs of Public Concern, that may be debated in Council.

9. And Whereas by the aforesaid Act passed in the fourteenth year of Our Reign, intituled, "An Act for making more effectual Provision for the "Government of the Province of Quebec in North America," It is further enacted and Provided, that the Council for the Affairs of the said Province, to be constituted and appointed in Manner therein directed, or the Major Part thereof, shall have power and Authority to make Ordinances for the peace, Welfare, and good Government of the said Province with the Consent of Our Governor, or, in his absence, of the Lieutenant Governor, or Commander in Chief for the time being ; provided, that no Ordinance shall be passed, unless upon some urgent Occasion at any Meeting of the Council, except between the first day of January and the first day of May. *(And Whereas the State and condition of Our said Province do require, that immediate provision should be made by Law for a Great Variety of Arrangements and Regulations essentially necessary to the Government thereof ; It is therefore Our Will and Pleasure, that you do within a convenient time issue Summons for the Assembling of our said Council in their Legislative Capacity either on the first day of April next, or as soon after as may be convenient, in Order to deliberate upon, and frame such Ordinances, as the Condition of Affairs within Our said Province shall require, and as shall, in your and their Judgement, be fit and necessary for the Welfare of Our said Province, and the Territories thereunto belonging.)[1]

10. You are nevertheless to take especial Care,

That no Ordinance be passed at any Meeting of the Council, where less than a Majority of the Council is present, or at any time, except between the first day of January and the first day of May, as aforesaid, unless upon

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* The latter part of this section (in bracket) omitted in the instruction to Haldimand.

[1] The first session of the Legislative Council was convened 17 August, 1775. Two other brief meetings were held Sept. 2nd and 5th but no legislative results were accomplished before Jan., 1777, when the Council resumed its sessions.

some urgent Occasion ; in which Case every Member thereof resident at Quebec, or within fifty Miles thereof shall be personally summoned to attend the same.

That no Ordinance be passed for laying any Taxes or Duties, such Rates and Taxes only excepted, as the Inhabitants of any Town or District may be authorized to assess, levy, and apply within the said Town or District, for the making Roads, erecting and repairing public Buildings, or for any other purpose respecting the Local Convenience and Oeconomy of such Town or District.

That no Ordinance touching Religion, or by which any punishment may be inflicted greater than Fine or Imprisonment for three Months, be made to take effect, until the same shall have received Our Approbation.

That no Ordinance be passed relative to the Trade, Commerce, or Fisheries of the said Province, by which the Inhabitants thereof shall be put upon a more advantageous footing, than any other His Majesty's Subjects either of this Kingdom, or the Plantations.

That no Ordinance respecting private property be passed without a Clause suspending its Execution, until Our Royal Will and Pleasure is known ; nor without a saving of the Right of Us, Our Heirs, and Successors, and of all Bodies politic and corporate, and of all other persons, except such as are mentioned in the said Ordinance, and those claiming by, from, and under them ; And, before such Ordinance is passed, proof must be made before you in Council, and entered in the Council-Books, that public Notification was made of the Party's Intention to apply for such Ordinance in the several Parish Churches, where the Lands in Question lye, for three Sundays at least successively, before any such Ordinance shall be proposed ; and you are to transmit and annex to the said Ordinance a Certificate under your hand that the same passed through all the Forms abovementioned.

That no Ordinance shall be enacted for a less time than two years, except in Cases of imminent Necessity, or immediate temporary Expediency; and you shall not reenact any Ordinance, to which Our Assent shall have been once refused, without express leave for that purpose first obtained from Us, upon a full Representation by you to be made to Us by one of Our Principal Secretaries of State, and to Our Commissioners for Trade and Plantations, for their Information, of the Reasons and Necessity for passing such Ordinance ; nor give your Assent to any Ordinance for repealing any other Ordinance, which hath passed in your Government, and shall have received Our Royal Approbation, unless you take Care, that there be a Clause inserted therein suspending and deferring the Execution thereof, until Our Pleasure shall be known, concerning the Same.

That in all Ordinances imposing Fines, Forfeitures, or Penalties, express Mention be made, that the same is granted or reserved to Us, Our Heirs, and Successors for the public Uses of the said Province, and the Support of the Government thereof, as by the said Ordinance shall be directed ; and that a Clause be inserted declaring, that the Money, arising by the Operation

of the said Ordinance, shall be accounted for unto Us in this Kingdom, and to Our Commissioners of Our Treasury for the time being ; and audited by Our Auditor General of Our Plantations, or his Deputy.

That all such Ordinances be transmitted by you within six Months after their passing, or sooner, if opportunity offers, to Us by One of our Principal Secretaries of State, and Duplicates thereof to Our Commissioners for Trade and Plantations, for their Information ; that they be abstracted in the Margents, and accompanied with very full and particular Observations upon each of them, that is to say, whether the same is introductive to a new Law, or does repeal a Law then before in being ; and you are also to transmit in the fullest manner the Reasons and Occasions for enacting such Ordinances, together with fair Copies of the Journals of the proceedings of the Council, which you are to require from the Clerk of the said Council.

11. In the Consideration of what may be necessary to be provided for by Law within Our said Province, as created and established by the aforesaid Act, intituled, "an Act for making more effectual Provision for the "Government of the Province of Quebec in North America," a Great Variety of important Objects hold themselves forth to the Attention of the Legislative Council.

12. The Establishment of Courts, and a proper Mode of administering Civil and Criminal Justice throughout the whole Extent of Our Province, according to the Principles declared in the said Act "for making more "effectual Provision for the Government thereof," demand the greatest Care and Circumspection ; for, as on the one hand it is Our Gracious purpose, conformable to the Spirit and Intention of the said Act of Parliament, that Our Canadian Subjects should have the benefit and use of their own Laws, Usages, and Customs in all Controversies respecting Titles of Land, and the Tenure, descent, Alienation, Incumbrances, and Settlement of Real Estates, and the distribution of the personal property of Persons dying intestate; so on the other hand, it will be the duty of the Legislative Council to consider well in framing such Ordinances, as may be necessary for the Establishment of Courts of Justice, and for the better Administration of Justice, whether the Laws of England may not be, if not altogether, at least in part the Rule for the decision in all Cases of personal Actions grounded upon Debts, Promises, Contracts, and Agreements, whether of a Mercantile or other Nature ; and also of Wrongs proper to be compensated in damages ; and more especially where Our natural-born Subjects of Great Britain, Ireland, or Our other Plantations residing at Quebec, or who may resort thither, or have Credits, or Property within the same, may happen to be either Plaintiff or defendant in any civil Suit of such a nature.[1]

[1] This and the following article with reference to the writ of Habeas Corpus, form the first step in that piecemeal process of impairing the complete restoration of the French Canadian civil law granted by the Quebec Act, particularly the 8th clause of it. As may be seen from several subsequent documents, this was the basis of continued conflict in the Council and in the Courts until 1791, when the controversy took another turn. In a document in the Dartmouth Papers, endorsed "Extract from the Instructions to the Governor of Quebec, so far as relates to the Establishment of Courts of Law," this clause appears in the following form:— "The Legislative Council are to frame the Ordinances for the Establishment of Courts of Justice,

13. Security to personal Liberty is a fundamental Principle of Justice in all free Governments, and the making due provision for that purpose is an object the Legislature of Quebec ought never to lose Sight of ; nor can they follow a better Example than that, which the Common Law of this Kingdom hath set in the Provision made for a Writ of Habeas Corpus,[1] which is the Right of every British Subject in this Kingdom.

14. With Regard to the Nature and number of the Courts of Justice, which it may be proper to establish, either for the whole Province at large, or separately for its dependencies, and the times and places for holding the said Courts, no certain Rule can be laid down in a Case, in which the Judgement must in many Respects at least be altogether guided by Circumstances of local Convenience and Consideration.

15. In General it may be proper, that there should be a Superior or Supreme Court of criminal Justice and Jurisdiction for the Cognizance of all Pleas of the Crown, and for the Trial of all manner of Offences whatsoever, to be held before the Chief Justice for the time being at such times and places, as shall be most convenient for the due and speedy Administration of Justice, and the preventing long imprisonments ; the said Court to be called and known by the name of the Court of King's Bench ; That for the more orderly establishment and Regulation of Courts of Civil Jurisdiction, the Province of Quebec, as limited and bounded by the aforesaid Act of Parliament "for making more effectual Provision for the Govern-"ment of the Province of Quebec in North America," be divided into two Districts by the names of Quebec and Montreal, each district to be limited and bounded in such manner, as shall be thought best adapted to the Object of the Jurisdiction to be established therein ; That there be established in each of the said Districts a Court of Common pleas to be held at such times and places, as shall be judged most convenient, and to have full power, Jurisdiction and Authority to hear and determine all Civil Suits and Actions cognizable by the Court of Common Pleas in Westminster Hall, according to the Rules prescribed by the said Act of Parliament "for making more "effectual Provision for the Government of the Province of Quebec in North "America," and according to such Laws and Ordinances, as shall from time to time be enacted by the Legislature of the said Province in manner therein directed ; That there be three Judges in each of the said Courts of Common Pleas, that is to say, two of Our natural-born Subjects of Great Britain, Ireland, or Our other Plantations, and one Canadian ; and also one Sheriff appointed for each district ; That besides the foregoing Courts of Criminal and Civil Jurisdiction for the Province at large, there be also an Inferior Court of Criminal and Civil Jurisdiction in each of the Districts of the

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and for the administration of Justice, so as that the Laws of England, if not altogether, may be as nearly as possible the Rule of Decision in all personal Actions, grounded upon Debts, Contracts, &c., and especially where the natural-born subjects are concerned." M 385, p. 485.

[1] Yet when this was most vigorously contended for at the passing of the Quebec Act it was absolutely denied by the Government. In the document referred to in the previous note, this article reads as follows,—"Security to personal Liberty to be provided for: And the Writ of Habeas Corpus, as a part of the criminal Law, to be adopted in its full Extent." M 385, p. 485.

Illinois, S$^{t}$ Vincenne, Detroit, Missilimakinac, and Gaspée, by the Names of the Court of King's Bench for such district, to be held at such times, as shall be thought most convenient, with Authority to hear and determine in all Matters of Criminal Nature according to the Laws of England, and the Laws of the Province hereafter to be made and passed ; and in all Civil matters according to the Rules prescribed by the aforesaid Act of Parliament "for "making more effectual Provision for the Government of Quebec in North "America ;" That each of the said Courts shall consist of one judge, being a natural-born Subject of Great Britain, Ireland, or Our other Plantations, and of one other Person, being a Canadian, by the name of Assistant or Assessor, to give advice to the Judge in any Matter, when it may be necessary ; but to have no Authority or Power to attest or issue any Process, or to give any Vote in any order, Judgement, or decree ; That the said Judges, so to be appointed, as aforesaid, for each District, shall have the same power and Authority in Criminal Cases, as is vested in the Chief Justice of Our said Province ; and also the same Power and Authority in Civil Cases, as any other Judge of Common Pleas within Our said Province, excepting only that, in Cases of Treason, Murder, or other Capital Felonies, the said Judges shall have no other Authority, than that of Arrest and Commitment to the Goals of Quebec, or of Montreal, where alone Offenders in such Cases shall be tried before Our Chief Justice ; That a Sheriff be appointed in each of the said Districts for the Execution of Civil and Criminal Process ; That the Governor and Council (of which, in the absence of the Governor and Lieutenant Governor, the Chief Justice is to be President,) shall be a Court of civil Jurisdiction for the hearing and determining all Appeals from the Judgement of the other Courts, where the matter in dispute is above the value of Ten Pounds ; That any Five of the said Council, with the Governor, Lieut$^{t}$ Governor, or Chief Justice, shall constitute a Court for that purpose ; and that their Judgement shall be final in all Cases not exceeding the value of £500 sterling, in which Cases an Appeal from their Judgement is to be admitted to Us in Our Privy Council. It is however Our Will and Pleasure, that no Appeal be allowed, unless security be first duly given by the Appellant, that he will effectually prosecute the same, and answer the Condemnation, as also pay such Costs and Damages, as shall be awarded by Us, in case the Sentence be affirmed ; Provided nevertheless, where the matter in question relates to the taking or demanding any Duty payable to Us, or to any Fee of Office, or annual Rents, or other such like matter or thing, where the Rights in future may be bound, in all such Cases appeal to Us, in Our Privy Council is to be admitted, tho' the immediate sum or value appealed for be of less value.—And it is Our further Will and Pleasure, that in all Cases, where Appeals are admitted unto Us in Our Privy Council, execution be suspended until the final determination of such Appeal, unless good and sufficient security be given by the Appellee to make ample restitution of all, that the Appellant shall have lost by means of such decree or judgement, in case, upon the determination

of such Appeal, such decree or judgement should be reversed, and restitution awarded to the Appellant. Appeals unto Us in Our Privy Council are also to be admitted in all cases of Fines imposed for misdemeanors ; Provided the fines, so imposed, amounted to, or exceed the sum of £100 sterling, the Appellant first giving good Security, that he will effectually prosecute the same and answer the Condemnation, if the sentence, by which such Fine was imposed in Quebec, be affirmed.[1]*

16. It is Our Will and Pleasure, that all Commissions to be granted by you to any person or persons to be judges or justices of the peace, or other necessary Officers, be granted during pleasure only.

17. You shall not displace any of the Judges, Justices of the peace or other Officers or Ministers without good and sufficient cause, which you shall signify in the fullest and most distinct manner to Us by one of Our principal Secretaries of State, and to Our Commissioners for Trade and Plantations, for their information.

18. And whereas frequent complaints have heretofore been made of great delays and undue proceedings in the Courts of Justice in several of Our Plantations, whereby many of Our good Subjects have very much suffered ; and it being of the greatest importance to Our Service, and to the welfare of Our Plantations, that Justice be every where speedily and duly administered ; and that all disorders, delays, and other undue Practises in the administration thereof be effectually prevented ; We do particularly require you to take especial Care, that in all Courts, where you are or shall be authorized to preside, justice be impartially administered ; and that in all other Courts established, or to be established within Our said Province, all Judges, and other Persons therein concerned do likewise perform their several Duties without any delay or partiality.

19. You are to take care, that all Writs be issued in Our Name throughout the Province under your Government.

20. The establishment of proper regulations in matters of ecclesiastical concern is an Object of very great importance, and it will be your indispensable duty to lose no time in making such arrangements in regard thereto, as may give full satisfaction to Our new Subjects in every point, in which they have a right to any indulgence on that head ; always remembering, that it is a toleration of the free exercise of the religion of the Church of Rome only, to which they are entitled, but not to the powers and privileges of it, as an established Church, for that is a preference, which belongs only to the Protestant Church of England.

21. Upon these principles therefore, and to the end, that Our just Supremacy in all matters ecclesiastical, as well as civil, may have its due scope and influence, it is Our Will and Pleasure,——

* An additional article inserted in Haldimand's instructions. See page 697.

[1] The greater part of this article of the Instructions is based upon the "Epitome of the proposed Ordinance for establishing Courts of Justice in the Province of Quebec," referred to in note 2, p. 584, and given in full below at p. 637. The paper endorsed "Extract from the Instructions" &c., M 385, p. 485, covers this field also, but its lines are not followed. However, the last few clauses in it are again taken up in the succeeding four articles, Nos. 16-19.

First, that all Appeals to, or correspondence with any foreign ecclesiastical jurisdiction, of what nature or kind so ever, be absolutely forbidden under very severe Penalties.

Secondly, That no Episcopal or Vicarial Powers be exercised within Our said Province by any Person professing the Religion of the Church of Rome, but such only, as are essentially and indispensably necessary to the free exercise of the Romish Religion; and in those cases not without a Licence and Permission from you under the Seal of Our said Province, for, and during Our Will and Pleasure, and under such other limitations & restrictions, as may correspond with the spirit and provision of the Act of Parliament, "for making more effectual provision for the Government of "the Province of Quebec ;" And no person whatever is to have holy Orders conferred upon him, or to have the Cure of Souls without a License for that purpose first had or obtained from you.

Thirdly, That no person professing the Religion of the Church of Rome be allowed to fill any ecclesiastical Benefice, or to have and enjoy any of the Rights or Profits belonging thereto, that is not a Canadian by birth, (such only excepted, as are now in possession of any such Benefice,) and that is not appointed thereto by Us, or by, or under Our Authority, and that all Right, or claim of right in any other Person whatever to nominate, present, or appoint to any vacant Benefice, other than such as may lay claim to the patronage of Benefices, as a Civil Right, be absolutely abolished. No Person to hold more than one Benefice, or at least not more than can reasonably be served by one and the same Incumbent.

Fourthly, That no person whatever, professing the Religion of the Church of Rome, be appointed Incumbent of any Parish, in which the Majority of the Inhabitants shall solicit the appointment of a Protestant Minister ; in such case the Incumbent shall be a Protestant, and entitled to all Tythes payable within such Parish ; But nevertheless the Roman Catholicks may have the use of the Church for the free exercise of their Religion at such time, as may not interfere with the Religious Worship of the Protestants : And in like manner the Protestant Inhabitants in every Parish, where the Majority of Parishioners are Roman Catholicks, shall notwithstanding have the use of the Church for the exercise of their Religion at such times, as may not interfere with the Religious Worship of the Roman Catholicks.

Fifthly, That no Incumbent professing the Religion of the Church of Rome, appointed to any Parish, shall be entitled to receive any Tythes for Lands, or Possessions occupied by a Protestant ; but such Tythes shall be received by such Persons, as you shall appoint, and shall be reserved in the hands of Our Receiver General, as aforesaid, for the support of a Protestant Clergy in Our said Province to be actually resident within the same, and not otherwise, according to such directions as you shall receive from Us in that behalf.—And in like manner all growing Rents and Profits of a

vacant Benefice shall, during such vacancy, be reserved for, and applied to the like uses.

Sixthly, That all Persons professing the Religion of the Church of Rome, which are already possessed of, or may hereafter be appointed to any ecclesiastical Benefice, or who may be licensed to exercise any Power or Authority in respect thereto, do take and subscribe before you in Council, or before such Person as you shall appoint to administer the same, the Oath required to be taken and subscribed by the aforesaid Act of Parliament passed in the fourteenth year of Our Reign, intituled, "An Act for making "more effectual Provision for the Government of the Province of Quebec "in North America."

Seventhly, That all Incumbents of Parishes shall hold their respective Benefices during good behaviour, subject however, in cases of any Conviction for criminal Offences, or upon due proof of seditious Attempts to disturb the Peace and Tranquillity of Our Government, to be deprived, or suspended by you with the Advice and Consent of a Majority of Our said Council.

Eighthly, That such Ecclesiasticks, as may think fit to enter into the holy state of Matrimony, shall be released from all Penalties, to which they may have been subjected in such Cases by any Authority of the See of Rome.

Ninthly, That freedom of Burial of the Dead in Churches and Church yards be allowed indiscriminately to every Christian Persuasion.

Tenthly, That the Royal Family be prayed for in all Churches and Places of Holy Worship, in such manner and form, as are used in this Kingdom ; and that Our Arms and Insignia be put up not only in all such Churches and Places of holy Worship, but also in all Courts of Justice ; and that the Arms of France be taken down in every such Church or Court, where they may at present remain.

Eleventhly, That the Society of Romish Priests, called the Seminaries of Quebec and Montreal, shall continue to possess and occupy their Houses of Residence, and all other Houses and Lands, to which they were lawfully intitled on the 13th of September 1759 ; and it shall be lawful for those Societies to fill up Vacancies, and admit new Members according to the Rules of their Foundations, and to educate Youth, in order to qualify them for the Service of Parochial Cures ; as they shall become vacant. It is nevertheless Our Will and Pleasure, that not only these Seminaries, but all other Religious Communities, so long as the same shall continue, be subject to visitation by You Our Governor, or such other Person or Persons, as you shall appoint for that purpose, and also subject to such Rules and Regulations, as you shall, with the Advice and Consent of Our Council, think fit to establish and appoint.

Twelfthly, It is also Our Will and Pleasure, that all other Religious Seminaries and Communities (that of the Jesuits only excepted) do for the present and until We can be more fully informed of the true State of them,

and how far they are, or are not essential to the free exercise of the Religion of the Church of Rome, as allowed within Our said Province, remain upon their present Establishment; but you are not to allow the admission of any new Members into any of the said Societies or Communities, the Religious Communities of Women only excepted, without our express orders for that purpose. That the Society of Jesuits be suppressed and dissolved, and no longer continued, as a Body corporate and politic, and all their Rights, Possessions and Property shall be vested in Us for such purposes, as We may hereafter think fit to direct and appoint ; but We think fit to declare Our Royal Intention to be, that the present Members of the said Society, as established at Quebec shall be allowed sufficient stipends and Provisions during their natural Lives ;—That all Missionaries amongst the Indians, whether established under the Authority of, or appointed by the Jesuits, or by any other ecclesiastical Authority of the Romish Church, be withdrawn by degrees, and at such times and in such manner, as shall be satisfactory to the said Indians, and consistent with the Public Safety ; and Protestant Missionaries appointed in their places ; That all ecclesiastical Persons whatsoever, of the Church of Rome, be inhibited, upon Pain of Deprivation, from influencing any Person in the making a Will, from inveigling Protestants to become Papists, or from tampering with them in matter of Religion, and that the Romish Priests be forbid to inveigh in their Sermons against the Religion of the Church of England, or to marry, baptize, or visit the sick, or bury any of Our Protestant Subjects, if a Protestant Minister be upon the Spot.

22. You are at all times and upon all occasions to give every Countenance and Protection in your Power to such Protestant Ministers, and School Masters, as are already established within Our said Province, or may hereafter be sent thither, to take Care, that such Stipends and Allowances, as We may think fit to appoint for them, be duly paid ; that the Churches already appropriated, or which may hereafter be appropriated to the use of Divine Worship according to the Rites of the Church of England, as by Law established, be well and orderly kept ; and, as the Number of Protestants shall, by God's Blessing, increase, to lay out new Parishes in convenient Situations, and set apart and appropriate proper Districts of Land therein for the Scite of Churches, and Parsonage Houses, and for Glebes for the Ministers and Schoolmasters.

23. You are to take especial Care, that God Almighty be devoutly and duly served in all Protestant Churches and Chapels throughout Our said Province, in which Divine Service is performed according to the Rites of the Church of England ; the Book of Common Prayer, as by Law established, be read each Sunday and Holiday; and the Blessed Sacrament duly administered.

24. You are not to prefer any Protestant Minister to any ecclesiastical Benefice in the Province under your Government, without a Certificate from the Right Reverend Father in God the Lord Bishop of London, of his

being conformable to the Doctrine and Discipline of the Church of England, and of a good Life and Conversation ; and if any Person hereafter preferred to a Benefice shall appear to you to give Scandal either by his doctrine or manners, you are to use the best means for his Removal.

25. You are to give orders forthwith, that every Protestant Minister within your Government, be one of the Vestry in his respective Parish ; and that no Vestry be held without him, except in case of Sickness, or, after Notice of a Vestry summoned, he omit to come.

26. And to the end, that the ecclesiastical Jurisdiction of the Lord Bishop of London may take place in Our Province under your Government, as far as conveniently may be ; We do think fit, that you give all Countenance and Encouragement to the exercise of the same, excepting only the collating to Benefices, granting Licenses for Marriages, and Probates of Wills, which We have reserved to you Our Governor, and to the Commander in Chief of Our said Province for the time being.

27. And We do further direct, that no School-master, who shall arrive in Our said Province from this Kingdom, be henceforward permitted to keep School without the Licence of the said Lord Bishop of London ; and that no other Person now there, or that shall come from other Parts, shall be admitted to keep School in your Government without your Licence first obtained.

28. You are to take especial Care, that a Table of Marriages, established by the Canons of the Church of England, be hung up in all places of public Worship according to the Rites of the Church of England.

29. And it is our further Will and Pleasure, that, in order to suppress, as much as in you lies, every species of Vice and Immorality, You forthwith do cause all Laws already made against Blasphemy, Prophaneness, Adultery, Fornication, Polygamy, Incest, Profanation of the Lord's day, Swearing, and Drunkenness, to be vigorously put in execution in every part of your Government ; and that you take due Care for the punishment of these and every other Vice and Immorality by presentment upon Oath, to be made to the Temporal Courts by the Church Wardens of the several Parishes at proper times of the Year to be appointed for that purpose ; And for the further discouragement of Vice and encouragement of Virtue and good Living, (that by such Examples the Infidels may be invited and perswaded to embrace the Christian Religion,) You are not to admit any Persons to public Trusts and Employments in the Province under your Government, whose ill fame and conversation may occasion Scandal.

30. The Extension of the Limits of the Province of Quebec necessarily calls forth your Attention to a Variety of new Matter and new Objects of Consideration ; The protection and control of the various Settlements of Canadian Subjects, and the regulation of the Peltry Trade in the upper or interior Country on the one hand, and the protection of the Fisheries in the Gulph of S$^{t}$ Lawrence, and on the Labrador Coast on the other hand, point to Regulations, that require deliberation and despatch.

31. The institution of inferior Judicatures with limited Jurisdiction in Criminal and Civil Matters for the Illinois, Poste S[t] Vincenne, the Detroit, Missilimakinac, and Gaspée has been already pointed out, and the Appointment of a Superintendent at each of these Posts is all, that is further necessary for their Civil concerns ; But it will be highly proper, that the Limits of each of those Posts, and of every other in the interior Country should be fixed and ascertained ; and that no Settlement be allowed beyond those Limits ; seeing that such Settlements must have the consequence to disgust the Savages ; to excite their Enmity ; and at length totally to destroy the Peltry Trade, which ought to be cherished and encouraged by every means in your Power.

32. It is Our Royal Intention, that the Peltry Trade of the interior Country should be free and open to all Our Subjects, Inhabitants of any of Our Colonies, who shall, pursuant to what was directed by Our Royal Proclamation of 1763, obtain Licences from the Governors of any of Our said Colonies for that purpose, under penalties to observe such Regulations, as shall be made by Our Legislature of Quebec for that purpose ; Those Regulations therefore, when established, must be made public throughout all Our American possessions, and they must have for their object the giving every possible facility to that Trade, which the nature of it will admit, and as may consist with fair and just dealing towards the Savages, with whom it is carried on. The fixing stated times and places for carrying on the Trade, and adjusting modes of settling Tariffs of the prices of Goods and Furs, and above all the restraining the Sale of Spirituous Liquors to the Indians will be the most probable and effectual means of answering the ends proposed. These and a variety of other regulations, incident to the nature and purpose of the Peltry Trade in the interior Country, are fully stated in a Plan proposed by Our Commissioners for Trade and Plantations in 1764, a copy of which is hereunto annexed,[1] and which will serve as a Guide in a variety of cases, in which it may be necessary to make provision by Law for that important Branch of the American Commerce.

33. The Fisheries on the Coast of Labrador, and the Islands adjacent thereto are objects of the greatest Importance, not only on account of the Commodities they produce, but also as Nurseries of Seamen, upon whom the Strength and Security of Our Kingdom depend.

34. Justice and Equity demand, that the real and actual property and possession of the Canadian Subjects on that Coast should be preserved intirely; and that they should not be molested or hindered in the exercise of any Sedentary Fisheries they may have established there.

35. Their Claims however extend to but a small District of the Coast, on the greatest part of which District a Cod Fishery is stated to be impracticable.

36. On all such parts of the Coast, where there are no Canadian Possessions, and more especially where a valuable Cod Fishery may be carried

[1] The plan is given below, following these Instructions; see p. 614.

on, it will be your Duty to make the Interests of Our British Subjects going out to fish there in Ships fitted out from Great Britain the first object of your care, and, as far as circumstances will admit, to establish on that Coast the Regulations in favour of British fishing Ships, which have been so wisely adopted by the Act of Parliament passed in the Reign of King William the Third "for the encouragement of the Newfoundland Fishery ;" and you are on no account to allow any possession to be taken, or sedentary Fisheries to be established upon any parts of the Coast, that are not already private Property, by any persons whatever, except only such as shall produce annually a Certificate of their having fitted out from some Port in Great Britain.

37. We have mentioned to you the Fisheries upon the Coast of Labrador, as the main object of your attention ; but the Commerce carried on with Savages of that Coast, and the state and condition of those Savages deserve some regard ; The Society of Unitas Fratrum, urged by a laudable Zeal for promoting Christianity, has already, under Our Protection, and with Our Permission, formed Establishments in the Northern parts of that Coast for the purposes of civilizing the Natives, and converting them to the Christian Religion. Their success has been answerable to their Zeal ; and it is Our express Will and Pleasure, that you do give them every countenance and Encouragement in your power, and that you do not allow any Establishment to be made, but with their consent, within the limits of their possessions.

38. By Our Commission to you under Our Great Seal of Great Britain you are authorised and impowered, with the advice and consent of Our Council, to settle and agree with the Inhabitants of Our said Province of Quebec for such Lands, Tenements, and Hereditaments, as now are, or shall hereafter be in Our Power to dispose of. It is therefore Our Will and Pleasure, that all Lands, which now are, or hereafter may be subject to Our Disposal, be granted in Fief or Seigneurie, in like manner as was practiced antecedent to the Conquest of the said Province; omitting however in any Grant, that shall be passed of such Lands, the Reservation of any Judicial powers, or privileges whatever. And it is Our further Will and Pleasure, that all Grants in Fief or Seigneurie, so to be passed by you, as aforesaid, be made subject to Our Royal Ratification, or Disallowance, and to a due Registry thereof within a limited time, in like manner as was practised in regard to Grants and Concessions held in Fief and Seigneurie under the French Government.

39. It is Our Will and Pleasure however, that no Grants be made of any Lands, on which there is any considerable growth of white Pines fit for Masting Our Royal Navy, and which lie convenient for water carriage ; But that you do cause all such Lands to be set apart for Our Use, and proper regulations made, and penalties inflicted, to prevent trespasses on such Tracts, and the cutting down, or destroying the Trees growing thereon.

40. And whereas it appears from the Representation of Our late Governor of the District of Trois Rivières that the Iron Works at Saint Maurice in that District are of great consequence to Our Service. It is therefore Our Will and Pleasure, that no part of the Lands, upon which the said Iron Works were carried on, or from which the Ore used in such Works was procured, or which shall appear to be necessary and convenient for that Establishment, either in respect to a free passage to the River Saint Lawrence, or for producing a necessary supply of Wood, Corn, and Hay, or for Pasture for Cattle, be granted to any private person whatever. And also that as large a District of Land, as conveniently may be, adjacent to, and lying round the said Iron Works, over and above what may be necessary for the above purposes, be reserved for Our Use, to be disposed of in such manner as We shall hereafter direct and appoint.

41. And it is Our further Will and Pleasure, that you do consider of a proper and effectual method of collecting, receiving, and accounting for Our Quit rents, whereby all Frauds, Concealments, Irregularity, or neglect therein may be prevented, and whereby the receipt may be effectually checked and controlled. And if it shall appear necessary to pass an Act for the more effectually ascertaining, and the more speedily and regularly collecting Our Quit rents, you are to prepare the heads of such a Bill, as you shall think may most effectually conduce to the procuring the good ends proposed ; and to transmit the same to Us by one of Our principal Secretaries of State for Our further Directions therein. And you are also to transmit a Duplicate thereof to Our Commissioners for Trade and Plantations for their information.

42. You are to use your best endeavours in improving the Trade of the Province under your Government by settling such Orders and Regulations therein, with the advice of Our said Council, as may be most acceptable to the generality of the Inhabitants; And It is Our express Will and Pleasure, that you do not upon any pretence whatever, upon pain of Our Highest Displeasure, give your assent to any Law or Laws for setting up any Manufactures, and carrying on any Trades, which are hurtful and prejudicial to this Kingdom; and that you do use your utmost endeavours to discourage, discountenance, and restrain any attempts, which may be made to set up such Manufactures, or establish any such Trades.

43. And it is Our Will and Pleasure, that you do not dispose of any Forfeitures or Escheats to any person, until the Sheriff or other proper Officer have made enquiry by a Jury upon their Oaths into the true value thereof; nor until you have transmitted to Our Commissioners of Our Treasury a particular account of such Forfeitures, and Escheats, and the Value thereof; and you are to take care, that the produce of such Forfeitures and Escheats, in case We shall think proper to give you directions to dispose of the same, be duly paid to Our Treasurer or Receiver General of Our said Province; and a full account transmitted to Our Commissioners of

Our Treasury, or Our High Treasurer for the time being, with the names of the persons, to whom disposed.

44. And whereas Commissions have been granted unto several persons in Our respective Plantations in America for the trying of Pirates in those parts, pursuant to the Acts for the more effectual suppression of Piracy; and by a Commission already sent to Our Province of New York Our Governor there is impowered, together with others therein mentioned, to proceed accordingly in reference to Our said Province; Our Will and Pleasure is that you do use your best endeavours to apprehend all persons whatever, who may have been guilty of Piracy within your Government, or who, having committed such Crimes at other places, may come within your Jurisdiction, and until we shall think proper to direct the like Commission to be established for Our Government at Quebec, you are to send such Pirates, with what proofs of their Guilt you can procure or collect, to Our Governor of New York, to be tryed and punished under the authority of the Commission established for those parts.

45. And whereas you will receive from Our Commissioners for executing the Office of High Admiral of Great Britain and of Our Plantations a Commission, constituting you Vice Admiral of Our said Province; you are hereby required and directed carefully to put in execution the several powers thereby granted you.

46. Whereas great Inconveniences have happened heretofore by Merchant Ships and other essels in the Plantations wearing the Colours borne by Our Ships of War, under pretence of Commissions granted to them by the Governors of the said Plantations, and by trading under those Colours, not only among Our own Subjects, but also those of other Princes and States, and committing divers Irregularities, they may very much dishonour Our Service; For preventing thereof, you are to oblige the Commanders of all such Ships, to which you shall grant Commissions, to wear no other Colours, than such as are described in an Order of Council of the 7th of January 1730, in relation to Colours to be worn by all Ships and Vessels, except Our Ships of War.

47. And whereas there have been great Irregularities in the manner of granting Commissions in the Plantations to private Ships of War, you are to govern yourself, whenever there shall be occasion, according to the Commissions and Instructions granted in this Kingdom; But you are not to grant Commissions of Marque or Reprisal against any Prince or State, or their Subjects in amity with Us to any person whatsoever without Our special Command.

48. Whereas We have been informed, that during the time of War, Our Enemies have frequently got Intelligence of the State of Our Plantations by Letters from private persons to their Correspondents in Great Britain, taken on board Ships coming from the Plantations, which hath been of dangerous consequence; Our Will and Pleasure therefore is, that you signify to all Merchants, Planters, and others, that they be very cautious

in time of War, whenever that shall happen, in giving any accounts by Letters of the public State and Conditions of Our Province under your Government; and you are further to give directions to all Masters of Ships, or other persons, to whom you may entrust your Letters, that they put such Letters into a Bag with a sufficient weight to sink the same immediately, in case of imminent danger from the Enemy: And you are also to let the Merchants and Planters know, how greatly it is for their Interest, that their Letters should not fall into the hands of the Enemy; and therefore that they should give like Orders to Masters of Ships in relation to their Letters; and you are further to advise all Masters of Ships, that they do sink all Letters, in case of danger, in the manner before mentioned.

49. And whereas the Merchants and Planters in Our Plantations in America, have in time of War, corresponded and traded with Our Enemies, and carried Intelligence to them, to the great prejudice and hazard of Our said Plantations; you are therefore by all possible methods to endeavor to hinder such Trade and Correspondence in time of War.

50. Whereas it is absolutely necessary, that We be exactly informed of the State of Defence of all Our Plantations in America, as well in relation to the Stores of War, that are in each Plantation, as to the Forts and Fortifications there, and what more may be necessary to be built for the Defence and Security of the same; you are as soon as possible to prepare an account thereof with relation to Our said Province in the most particular manner; and you are therein to express the present State of the Arms, Ammunition, and other Stores of War belonging to the said Province, either in public Magazines, or in the hands of privatepersons, together with the State of all places either already fortified, or thatyou judge necessary to be fortified for the Security of Our said Province; and you are to transmit the said accounts to Us by one of Our principal Secretaries of State, and also Duplicates thereof to Our Commissioners for Trade and Plantations, for their information, and also a Duplicate thereof to Our Master General, or principal Officers of Our Ordinance, which accounts are to express the particulars of Ordinance, Carriages, Balls, Powder, and other sorts of Arms and Ammunition in Our public Stores, and so from time to time of what shall be sent to you, or bought with the public Money; and to specify the time of the disposal, and the occasion thereof; And you are half yearly to transmit a general account of the State of the Fortifications and Warlike Stores specified in the manner above mentioned.

51. And in case of any Distress of any other of Our Plantations, you shall, upon application of the respective Governors thereof unto you, assist them with what aid the condition and safety of Our Province under your Government can spare.

52. If any thing shall happen, which may be of advantage or security to Our Province under your Government, which is not herein, or by your Commission provided for, We do hereby allow unto you, with the advice and consent of Our Council, to take order for the present therein, giving

unto Us, by one of Our principal Secretaries of State, speedy notice thereof, that you may receive Our Ratification, if We shall approve the same; Provided always, that you do not by colour of any power or authority hereby given you, commence or declare War without Our Knowledge and particular Commands therein; and you are also to transmit a Duplicate of such notice, as aforesaid, to Our Commissioners for Trade and Plantations for their information.

53. And whereas We have by the first article of these Our Instructions to you directed and appointed, that your chief Residence shall be at Quebec, you are nevertheless frequently to visit the other parts of your Government, in order to inspect the management of all public affairs, and thereby the better to take care, that the Government be so administered, that no disorderly practices may grow up contrary to Our Service and the welfare of Our Subjects.

54. And whereas great prejudice may happen to Our Service, and the security of the Province by your absence from those parts, you are not upon any pretence whatsoever to come into Europe without having first obtained leave for so doing from Us under Our Sign Manual and Signet, or by Our Order in Our Privy Council; Yet nevertheless, in case of Sickness, you may go to South Carolina, or any other of Our Southern Plantations, and there stay such a space of time, as the recovery of your Health may absolutely require.

55. And whereas We have thought fit by Our Commission to direct, that, in case of your death, or absence from Our said Province, and in case there be at that time no person within Our said Province commissionated or appointed by Us to be Our Lieutenant Governor, or Commander in Chief, that the eldest Councillor, being a natural born Subject of Great Britain, Ireland, or the Plantations, and professing the Protestant Religion, who shall be at the time of your death or absence residing within Our said Province under your Government, shall take upon him the administration of Government, and execute Our said Commission, and Instructions, and the several powers and authorities therein directed; It is nevertheless Our express Will and Pleasure, that in such case the said President shall forbear to pass any Act or Acts, but what are immediately necessary for the Peace and Welfare of the said Province, without Our particular Order for that purpose.

56. And whereas We are desirous, that a proper provision should be made for the support of Our Government within Our said Province of Quebec, We do therefore hereby declare it to be Our Royal Intention, that the following annual Salaries and Allowances be discharged and paid out of any Revenues arising to Us within the same, or out of such other Monies, as shall be granted or appropriated to the Uses and Services of Our said Province of Quebec, that is to say,

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| | £ | s. | d. |
|---|---|---|---|
| To the Governor p Annum | 2,000 | 0 | 0 |
| To the Lieutenant Governor | 600 | 0 | 0 |
| To the Chief Justice | 1,200 | 0 | 0 |
| To six Judges of Common Pleas, £500 each | 3,000 | 0 | 0 |
| To the Attorney General | 300 | 0 | 0 |
| To the Clerk of the Crown and Pleas | 100 | 0 | 0 |
| To two Sheriffs at £100 each | 200 | 0 | 0 |
| To the Secretary and Register | 400 | 0 | 0 |
| To the Clerk of the Council | 100 | 0 | 0 |
| To the Surveyor of Lands | 300 | 0 | 0 |
| To the Surveyor of Woods | 200 | 0 | 0 |
| To the Commissary for Indians | 300 | 0 | 0 |
| To the Captain of the Port | 100 | 0 | 0 |
| To the Naval Officer | 100 | 0 | 0 |
| To the Receiver General of the Revenues | 400 | 0 | 0 |
| To twenty-three Councillors at £100 each | 2,300 | 0 | 0 |
| To the Lieutenant Governors or Superintendants At the Illinois, Poste Saint Vincenne, Detroit, Missilimakinac, Gaspée, at £200 each | 1,000 | 0 | 0 |
| To one Judge of the inferior Courts of King's Bench and Common Pleas at each of the above five Posts at £100 each Judge | 500 | 0 | 0 |
| To an Assistant or Assessor at each Post at £50 p Annum | 250 | 0 | 0 |
| To a Sheriff at each District at £20 p Annum each | 100 | 0 | 0 |
| To a Grand Voyer | 200 | 0 | 0 |
| To a French Secretary | 200 | 0 | 0 |
| To four Ministers of the Protestant Church at £200 p. Ann. each | 800 | 0 | 0 |
| To two Schoolmasters at £100 p. Annum each | 200 | 0 | 0 |
| To an Allowance to the Person licenced to superintend the Romish Church | 200 | 0 | 0 |
| To Pensions to the Officers of a Corps of Canadians employed in the last War, and discharged without any Allowance, as follows, Viz[t] | | | |
| To Mons[r] Rigauville, the Commandant of said Corps | 200 | 0 | 0 |
| To five Captains £100 each | 500 | 0 | 0 |
| To ten Lieutenants £50 each | 500 | 0 | 0 |
| To the Commandant of the Savages | 100 | 0 | 0 |
| To Annual contingent Expenses | 1,000 | 0 | 0 |
| | £17,350 | 0 | 0 |

All which Salaries and Allowances are to commence on, and be payable from, and after the first day of May next ensuing.[1]

57. And whereas We are further willing in the best manner to provide for the support of the Government of Our said Province, by setting apart a sufficient Allowance to such, as shall be Our Lieutenant Governor, Commander in Chief, or President of Our Council for the time being within the same; Our Will and Pleasure therefore is, that, when it shall happen, that you shall be absent from Our said Province, one full Moiety of the Salary, and of all Perquisites and Emoluments whatsoever, which would otherwise become due unto you, shall, during the time of your absence from Our said Province, be paid and satisfied unto such Lieutenant Governor, Commander

[1] Among the Dartmouth Papers is an "Estimate of the Expence of the Civil Establishment of the Province of Quebec, and Its Dependencies." M 385, p. 494. In this a number of the salaries are rated at different amounts from those here given. Among the variations are the following—Lt. Governor, £800, Chief Justice, £1,000; the six Judges, £300 each, Commissary for Indians, £200. There are two additional offices, Judge of the Admiralty, £200, Register of the Court of Admiralty, £100. There was no provision for Schoolmasters, or for Contingent Expenses. From another document we find that the appointments to these positions were divided between Lord Dartmouth, the Treasury Board, and the Governor, as follows,—

"*Lord Dartmouth*—Lt. Governor, Chief Justice, Secry & Register, 3 Judges, Attorney Gen[l], Clerk of Crown, Commissary for Indian Affairs, Naval Officers, 5 Superintend[ts], 4 Ministers, 2 Schoolmasters.

*Treasury*—Surveyor of Lands, D[o] of Woods, Receiv[r] Gen[l].

*Governor*—Clerk of Council, Captain of ye Port, 2 Sheriffs, 5 Judges, 5 Assessors, 5 Sheriffs, Grand Voyer, French Secretary." M 385, p. 492.

in Chief, or President of Our Council, who shall be, resident upon the place for the time being, which We do hereby order and allot unto him towards his Maintenance, and for the better Support of the Dignity of that Our Government.

G.R.

## PLAN FOR THE FUTURE MANAGEMENT OF INDIAN AFFAIRS, REFERRED TO IN THE THIRTY-SECOND ARTICLE OF THE FOREGOING INSTRUCTIONS.

1. That the Trade and Commerce with the several Tribes of Indians in North America under the protection of His Majesty shall be free and open to all His Majesty's subjects, under the several Regulations and Restrictions hereafter mentioned, so as not to interfere with the Charter to the Hudson's Bay Company.

2. That for the better Regulation of this Trade, and the Management of Indian Affairs in general, the British Dominions in North America be divided into two Districts, to comprehend and include the several Tribes of Indians mentioned in the annexed Lists A. and B.

3. That no Trade be allowed with the Indians in the southern District, but within the Towns belonging to the several Tribes included in such District; and that in the Northern District the Trade be fixed at so Many Posts, and in such Situations, as shall be thought necessary.

4. That all Laws, now in Force in the several Colonies for regulating Indian Affairs, or Commerce, be repealed.

5. That there be one general Agent or Superintendant appointed by His Majesty for each District.

6. That the Agent or Superintendant for the Northern District shall be allowed three Deputies to assist him in the Administration of Affairs within his District; and that the Agent or Superintendant for the Southern District shall be allowed two Deputies.

7. That there shall be a Commissary, Interpreter, and Smith, appointed by His Majesty to reside in the Country of each Tribe in the Southern District, and at each Post in the Northern District.

8. That it be recommended to the Society for the propagation of the Gospel in foreign parts to appoint four Missionaries in each District, to reside at such places, as the Agent or Superintendant for each District shall recommend.

9. That the Commissaries, Interpreters, and Smiths in each District do Act under the immediate Direction and Orders of the Agent or Superintendant, who shall have a power of Suspending them in Case of Misbehaviour, and, in Case of Suspension of a Commissary, or of a Vacancy by Death, or Resignation, the Office shall be executed, until the King's pleasure is known, by one of the Deputies to the Agent or Superintendant.

10. That the said Agent or Superintendant shall have the Conduct of all public Affairs relative to the Indians; and that neither the Commander in Chief of His Majesty's Forces in America, nor any of the Governors and Commanders in Chief of any of the Colonies, or persons having military Commands in any of the Forts within each of the said Districts, do hold any General Meetings with the Indians, or send any public Talks to them without the Concurrence of the Agent or Superintendant, unless in cases of great Exigency, or when the said Agent or Superintendant may be in some remote part of his District.

11. That the said Agents or Superintendants do in all Affairs of political consideration, respecting peace and war with the Indians, purchases of Lands, or other Matters, on which it may be necessary to hold any general Meetings with the Indians, advise and act in concert with the Governors, (or the Governors and Councils, as the Occasion may require), of the several Colonies within their respective Districts; And that the said Agents or Superintendants shall be Councillors extraordinary within each Colony in their respective Districts, in like manner as the Surveyors General of the Customs for the Northern and Southern Districts of America.

12. That the Governor or Commander in Chief of every Colony be directed to communicate to the Agent or Superintendant of that District, within which his Government lyes, all such Information and Intelligence, as he may receive respecting Indian Affairs; And that the Agents or Superintendants shall in like manner communicate to the Governors all Intelligence and Information, respecting the State of Indian Affairs, which may in any wise regard the Security and Interest of the said Colonies.

13. That no Order shall be issued by the Governor or Commander in Chief of any of His Majesty's Colonies, or by any Officer having Military Command in any Forts within the Indian Country, for stopping the Trade with any Tribe of Indians in either of the said Districts, without the Concurrence and Consent of the Agent or Superintendant for Indian Affairs.

14. That the said Agents or Superintendants shall by themselves, or sufficient Deputies visit the several Posts or Tribes of Indians within their respective Districts once in every year, or oftener, as Occasion shall require, to enquire into, and take an Account of the Conduct and Behaviour of the subordinate Officers at the said Posts, and in the Country belonging to the said Tribes; to hear Appeals; and redress all Complaints of the Indians; make the proper Presents; and transact all Affairs relative to the said Indians.

15. That for the maintaining peace and good Order in the Indian Country, and bringing Offenders in criminal Cases to due Punishment, the said Agents or Superintendants, as also the Commissaries at each Post, and in the Country belonging to each Tribe, be empowered to Act as Justices of the Peace in their respective Districts and Departments, with all powers and priviledges vested in such Officers in any of the Colonies; and also full power of Committing Offenders in Capital Cases, in order that such Offenders may be prosecuted for the same; And that, for deciding all civil

actions, the Commissaries be empowered to try and determine in a Summary way all such Actions, as well between the Indians and Traders, as between one Trade and another, to the Amount of Ten Pounds Sterling, with the Liberty of Appeal to the Chief Agent or Superintendant, or his Deputy, who shall be empowered upon such appeal to give Judgement thereon; which Judgement shall be final, and process issue upon it, in like manner as on the Judgement of any Court of Common Pleas established in any of the Colonies.

16. That for the easy attainment of Justice, the evidence of Indians, under proper Regulations and Restrictions, be admitted in all Criminal as well as civil causes, that shall be tried and adjudged by the said Agents or Superintendants, or by the said Commissaries; and that their Evidence be likewise admitted by the Courts of Justice in any of His Majesty's Colonies or Plantations in Criminal cases, Subject to the same Pains and Penalties in Cases of false Evidence, as His Majesty's Subjects.

17. That the said Agents or Superintendants shall have power to Confer such Honors and Rewards on the Indians, as shall be necessary; and of granting Commissions to principal Indians in their respective Districts to be War Captains or Officers of other Military Distinctions.

18. That the Indians of each Town in every Tribe in the Southern District shall choose a beloved Man to be approved of by the Agent or Superintendant for such District, to take care of the Mutual Interests both of Indians and Traders in such Town; and that such beloved Men, so elected and approved in the several Towns, shall elect a Chief for the whole Tribe, who shall constantly reside with the Commissary in the Country of each Tribe, or occasionally Attend upon the said Agent or Superintendant, as Guardian for the Indians and Protector of their Rights, with Liberty to the said Chief to be present at all Meetings and upon all Hearings or Trials relative to the Indians before the Agent or Superintendant, or before the Commissaries; and to give his Opinion upon all Matters under Consideration at such Meetings or Hearings.

19. That the like Establishments be made for the Northern District, as far as the Nature of the Civil Constitution of the Indians in this District, and the Manner of Administering civil affairs will admit.

20. That no person having any Military Command in the Indian Country shall be capable of Acting as Commissary for the Affairs of the Indians; in either of the above mentioned Districts respectively; nor shall such person having military Command be allowed to carry on trade with the Indians, or to interpose his Authority in any thing, that regards the Trade with, or civil Concerns of the Indians; but to give the Commissary or other Civil Magistrate all Assistance in his power, whenever thereunto required.

21. That the said Commissaries shall keep exact and regular Accounts, by way of Journal, of all their Transactions and Proceedings, and of all Occurrences in their respective Departments, and shall by every oppor-

tunity communicate such Transactions and Occurrences to the Agent or Superintendant in their respective Districts; which Agent or Superintendant shall regularly by every Opportunity correspond with the Commissioners for Trade and Plantations.

22. That the Agent or Superintendant, to be appointed for each District, as also the Commissaries residing at the Posts, or in the Indian Country within each District, shall take an Oath before the Governor or Chief Judge of any of the Colonies within their respective Districts, for the due Execution of their respective Trusts; and they and all other subordinate Officers, employed in the Affairs of the Indians, shall be forbid, under proper Penalties, to carry on any Trade with them, either upon their own Account, or in Trust for others, or to make any Purchase of, or accept any Grants of Lands from the Indians.

23. That for the better regulation of the Trade with the said Indians, conformable to their own Requests, and to prevent those Frauds and Abuses, which have been so long and so loudly complained of in the manner of carrying on such Trade, all Trade with the Indians in each District be carried on under the Direction and Inspection of the Agents or Superintendants, and other subordinate Officers to be appointed for that purpose, as has been already mentioned.

24. That all Persons intending to trade with the Indians shall take out Licences for that purpose under the Hand and Seal of the Governor or Commander in Chief of the Colony, from which they intend to carry on such Trade, for every of which Licences no more shall be demanded or taken than two Shillings.

25. That all persons taking out Licences shall enter into Bond to His Majesty, His Heirs, and Successors in the Sum of with one Surety in the Sum of for the due observance of the Regulations prescribed for the Indian Trade.

26. That every Person willing to give Security, and finding a Security willing, if required, to take an Oath, that he is possessed of property to double the value of the Sum he stands security for, shall be intitled to a Licence.

27. That every such Licenced Trader shall at the time of taking out the Licence, declare the Post or Truck house, at which or the Tribe of Indians with which he intends to trade, which shall be specified in the Licence itself.

28. That no Licence be granted to continue longer than for one Year.

29. That no Person trade under such Licence, but the person named in it, his Servants, or Agents, whose Names are to be inserted in the Margents; and in Case any of the Servants or Agents named in such Licence shall die, or be discharged, the same shall be notified to the Governor, by whom the Licence was granted, or to the Commissary of the Post, or in the Tribe, where such Trader carries on Trade, to the end that the Name or Names of any other Servants or Agents, employed by the said Trader in the place

of those dead or discharged, may in like manner be inserted in the Margent of the Licence.

30. That all Licences be entered in the Secretary's Office, or other proper Office of Record in each Colony, where they are taken out; for which Entry no more shall be demanded or taken than Six pence for each Licence; and all persons to have free Liberty to inspect such Entry, paying a Fee of Six pence for the same.

31. That Persons trading with the Indians without a Licence, and without giving the Security above required, or trading at any other Posts or places, than those expressed in their Licences, do forfeit all the Goods they shall be found then trading with, and also pay a Fine of to His Majesty, His Heirs, and Successors, and suffer Months Imprisonment.

32. That all Traders immediately upon Arrival at the posts or Truck houses in the Northern district, or in the Tribes in the Southern district, for which Licences have been taken out, and before any Goods are sold to, or bartered with the Indians, do produce such Licences to the Commissaries appointed for the Direction and Inspection of the Trade at such posts, or Truck houses, or in such Tribes.

33. That all Trade with the Indians shall be carried on by Tariffs, to be settled and Established from time to time by the Commissaries at the several Posts, or Truck houses, or in the Countries belonging to the several Tribes in Concert with the Traders and Indians.

34. That the Commissaries appointed to direct and inspect the Trade at each Truck house in the Northern District, shall be empowered to fix and prescribe Limits round each Post or Truck house, within which Limits all Trade with the Indians may be commodiously carried on in the most public Manner.

35. That all Traders have free Liberty to erect Hutts and Warehouses within such Limits, in such Order and Manner as the Commissary shall, with the concurrence of the Officer Commanding at such Post, Direct and appoint.

36. That no Trader shall Traffic, or have any Dealings with the Indians without the Limits prescribed by the Commissary or other Chief Officer appointed for the Inspection and Direction of the Trade.

37. That each Truck house or post of Trade in the Northern District be fortified and garrisoned ; and that all Traders have free Liberty to retire into such Garrison with their Effects, when ever any Disturbance shall Arise, or the Commissary at such post shall represent it to be necessary.

38. That no Trader shall sell or otherwise supply the Indians with Rum, or other spirituous Liquors, Swan Shot, or rifled Barrelled Guns.

39. That in Trade with the Indians no Credit shall be given them for Goods in Value beyond the Sum of fifty Shillings ; and no Debt beyond that Sum shall be recoverable by Law or Equity.

40. That all Disputes concerning Weights or Measures in the buying or selling Goods shall be decided by Standard Weights and Measures, to be kept in each Post or Truck-house in the Northern District, and in each Tribe in the Southern District.

41. That no private person, Society, Corporation, or Colony be capable of acquiring any Property in Lands belonging to the Indians, either by purchase of, or Grant, or Conveyance from the said Indians, excepting only where the Lands lye within the Limits of any Colony, the soil of which has been vested in proprietors, or Corporations by Grants from the Crown; in which Cases such Proprietaries or Corporations only shall be capable of acquiring such property by purchase or Grant from the Indians.

42. That proper Measures be taken, with the Consent and Concurrence of the Indians, to ascertain and define the precise and exact Boundary and Limits of the Lands, which it may be proper to reserve to them, and where no Settlement whatever shall be allowed.

43. That no purchases of Lands belonging to the Indians, whether in the Name and for the Use of the Crown, or in the Name and for the Use of proprietaries of Colonies be made but at some general Meeting, at which the principal Chiefs of each Tribe, claiming a property in such Lands, are present ; and all Tracts, so purchased, shall be regularly surveyed by a Sworn Surveyor in the presence and with the Assistance of a person deputed by the Indians to attend such Survey ; and the said Surveyor shall make an accurate Map of such Tract, describing the Limits, which Map shall be entered upon Record, with the Deed of Conveyance from the Indians.

It is estimated, that the annual Expence of supporting the Establishments, proposed in the foregoing plan, providing presents for the Indians, and other contingent Expences, may amount to about twenty thousand pounds ; and it is proposed to defray this Expence by a Duty upon the Indian Trade, either collected upon the Exportation of Skins and Furs, (Beaver excepted,) from the Colonies, or payable by the Traders at the posts and places of Trade, as shall, upon further Examination and the fullest Information, be found most practicable, and least burthensome to the Trade.

A.

List of Indian Tribes in the northern District of North America.

Mohocks.
Oneidas.
Tuscaroras.
Onondagas.
Cayugas.
Senecas.
Oswegachys.
Nanticokes.
Conoys.
Powtewatamis.
Ottawas.
Chipeweighs, or Missisagis.
Meynomenys.
Folsavoins.
Puans.
Sakis.
Foxes.
Twightwees.

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| Tuteeves. | Kickapous. |
| Saponeys. | Mascoutens. |
| Caghnawagas. | Piankashaws. |
| Canassadagas. | Wawiaghtonos. |
| Arundacks. | Keskeskias. |
| Algonkins. | Illinois. |
| Abenaquis. | Sioux. |
| Skaghquanoghrōnos. | Micmacs. |
| Hurons. | Norwidgewalks. |
| Shawanese. | Arseguntecokes. |
| Delawares. | Penobscots. |
| Wiandots. | S$^{t}$ John's. |

B.

List of Indian Tribes in the southern District of North America.

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| Cherokees. | Attucapas. |
| Creeks. | Bayugtas. |
| Chickasaws. | Tunicas. |
| Chactaws | Peluches |
| Catawbas, | Ofugulas. |
| Beluxis. | Querphas. |

Endorsed : Dr$^{t}$
Instructions for Guy Carleton Esq$^{r}$ Gov$^{r}$ of Quebec, Dated 3$^{d}$ Jan$^{y}$ 1775.
In Order of Council of 28$^{th}$ Decem$^{r}$ 1774.

George R

C.O.

## INSTRUCTIONS RELATING TO TRADE AND NAVIGATION[1]

(Instructions 1774-1778.)

4

[L.S.] Orders and Instructions to Our Trusty and Well beloved Guy Carleton Esquire Our Captain General and Governor in Chief in and over Our Province of Quebec in America, In pursuance of several Laws relating to the Trade and Navigation of this Kingdom of Great Britain and our Colonies and Plantations in America, Given at Our Court at S$^{t}$ James's the Third Day of January 1775. In the Fifteenth year of Our Reign.—

First You shall inform yourself of the principal Laws relating to the Plantation Trade, and shall take a solemn Oath to do your utmost that all the Clauses, Matters, and Things contained in all Acts of Parliament now in force, or that hereafter shall be made relating to Our Colonies or Plan-

[1] Canadian Archives, M 230, p. 177. These Instructions were furnished to all the Colonial Governors and contain a summary of the famous Navigation Acts, which express the essence of the whole Colonial System of the time, and show how limited, in point of law at least, was the outlet for the colonies even in regard to intercolonial, not to mention foreign intercourse.

tations be punctually and bonâ fide observed according to the true intent and meaning thereof.

2d And whereas, by an Act made in the Seventh and Eighth Years of the Reign of King William the Third, intituled "An Act for preventing "Frauds, and regulating abuses in the Plantation Trade" the Officers appointed for the performance of certain things mentioned in an Act passed in the fifteenth year of the Reign of King Charles the Second, intituled "An Act for the encouragement of Trade" commonly known by the Name of the Naval Officers, are to give security to the Commissioners of our Customs in Great Britain for the Time being, or such as shall be appointed by them, for Our use, for the true and faithful performance of their duty, you, shall take care, that the said Naval Officers do give Security to the said Commissioners of Our Customs or the Persons appointed by them, who are impowered to take the same in the manner thereby enjoined, and that he or they produce to you a certificate from them, of his, or their having given Security pursuant to a Clause in the said Act, and you are not to admit any Person to act, as Naval Officer who does not within two Months, or as soon as conveniently may be, after he has enter'd upon the execution of his Office, produce a Certificate of his having given such Security as aforesaid.

3d And whereas it is necessary for the more effectual dispatch of Merchants and others, that the Naval Officers and the Collectors of the Customs should reside at the same Ports or Towns, you are therefore to take care, that this regulation be observed,* and to consult with the Surveyor General of Our Customs, in what place it may be most convenient to have the Custom-House fixed in part of his District ; and to take Care, that the Collector and Naval Officer reside within a convenient Distance of the Custom-House for the Dispatch of Business.

4. Whereas by the Act for the encouraging and increasing of Shipping and Navigation passed in the twelfth year of the reign of King Charles the Second, no Goods or Commodities whatsoever are to be imported into, or exported out of any of Our Colonies or Plantations in any other ships or Vessels whatsoever, but in such as do truly and without Fraud belong only to Our People of Great Britain, or Ireland, or are of the Built of, and belonging to any of Our Lands, Islands, or Territories, as the Proprietors and right Owners thereof, and whereof the Master and three fourths of the Mariners at least are British under the Penalty of the forfeiture and loss of all the Goods and Commodities, which shall be imported into, or exported out of any of the said Places in any other Ship or Vessel, as also of the Ship or Vessel with her Guns, Furniture &c : And whereas by a Clause in the Act for preventing Frauds, and regulating Abuses in the Customs passed in the thirteenth and fourteenth years of the reign of King Charles the Second, no foreign built Ship, that is to say, not built in any of Our Dominions of

* This addition to the 3d Article found in the Trade Instructions to Carleton, 1768. Privy Council Office Plantation Book. 1767-1771.

Asia, Africa, and America shall enjoy the Privilege of a Ship belonging to Great Britain or Ireland, although owned and manned by British Subjects, (excepting such Ships only as shall be taken at Sea by Letters of Mart, or Reprizal, and Condemnation thereof made in Our Court of Admiralty as lawful Prize,) but all such Ships shall be deemed as Aliens Ships, and be liable to all duties that Aliens Ships are liable to by Virtue of the aforesaid Act, for the encouraging and increasing of Shipping and Navigation : And whereas by a Clause in the Act for preventing Frauds and regulating Abuses in the Plantation Trade, it is enacted that no Goods or Merchandizes whatsoever shall be imported into or exported out of any of Our Colonies or Plantations in Asia, Africa, or America, or shall be laden in, or carried from any one Port or place in the said Colonies or Plantations to any other Port or Place in the same, or to Our Kingdom of Great Britain in any Ship or Bottom but what is or shall be of the Built of Great Britain, or Ireland, or of the said Colonies or Plantations, and wholly owned by the People thereof, or any of them, and navigated with the Master and three fourths of the Mariners of the said Places only, except such Ships only, as shall be taken as Prize, and Condemnation thereof made in One of the Courts of Admiralty in Great Britain, Ireland, or the said Plantations to be navigated by the Master and three fourths of the Mariners British, or of the said Plantations as aforesaid, and whereof the Property does belong to British Subjects, on pain of forfeiture of Ship and Goods ; And whereas by another Clause in the said Act for the more effectual prevention of Frauds, which may be used by colouring foreign Ships under British Names : It is further enacted, that no Ship or Vessel whatsoever shall be deemed or pass as a Ship of the Built of Great Britain, Ireland, Guernsey, Jersey, or any of Our Plantations in America, so as to be qualified to trade to, from, or in any of the said Plantations, until the Person or Persons claiming property in such Ship or Vessel shall register the same in manner thereby appointed : You shall take care and give in charge that these Matters and things be duely observed within Our said Province under your Government according to the true intent and meaning of the said Acts & the Offences & Offenders prosecuted according to the directions thereof, and where it is required, that the Master and three fourths of the Mariners be British ; You are to understand, that the true intent and meaning thereof is, that they shall be such during the whole Voyage unless in case of Sickness, Death, or being taken Prisoners in the Voyage to be proved by the Oath of the Master or other Chief Officer of the Ship, and none but Our Subjects of Great Britain, Ireland, or the Plantations are to be accounted British.

5. Whereas, by the said Act of Navigation, as the same stands amended and altered by the aforesaid Act for regulation of the Plantation Trade, it is enacted that for every Ship or Vessel, which shall set Sail out of, or from Great Britain for any British Plantation in America, Asia, or Africa, sufficient Bond shall be given with one Surety to the chief Officer of the Customs of such Port or Place, from whence the said Ship shall set sail, to the value

of One thousand Pounds if the Ship be of less burthen, than one hundred Tons, and of the Sum of two thousand Pounds, if the Ship shall be of greater Burthen: That in case the said Ship or Vessel shall load any of the Commodities therein enumerated, Viz$^{t}$ Sugar, Tobacco, Cotton Wool, Indigo, Ginger, Fustick or other dying Wood, of the growth, production, or Manufacture of any British Plantation in America, Asia, or Africa, at any of the said British Plantations, the said Commodities shall by the said Ship be brought to some Port of Great Britain, and be there unladen and put on Shore, the danger of the Seas only excepted ; and for all Ships coming from any Port or Place to any of the aforesaid Plantations which by this Act are permitted to trade there, that the Governors of such British Plantations shall before the said Ship or Vessel be permitted to load on board any of the said Commodities, take Bond in manner and to the value aforesaid for each respective Ship or Vessel, that such Ship or Vessel shall carry all the aforesaid Goods, that shall be laden on board the said Ship or Vessel, to some other of the said British Plantations, or to Great Britain; and that every Ship or Vessel which shall load or take on board any of the aforesaid Goods, until such Bond be given to the said Governor, or Certificate produced from the Officers of any Custom House of Great Britain, that such Bond hath there been duly given, shall be forfeited with her Guns, Tackle, Apparel, and Furniture, to be employed and recovered, as therein is directed: And whereas by two Acts passed in the Third & Fourth years of the Reign of Queen Anne, the one intituled, "An Act for the encouraging the importation of "Naval Stores from Her Majesty's Plantations in America," and the other for granting to Her Majesty "a further Subsidy on Wines and Merchandizes "imported;" And by two other Acts passed in the Eighth year of the reign of King George the first, the one intituled "an Act for the encouragement of "the Silk Manufactures of this Kingdom, and for taking off several duties "on Merchandizes exported, and for reducing the Duties upon Beaver "Skins, Pepper, Mace, Cloves, and Nutmegs imported, and for importation "of all Furs of the product of the British Plantations into this Kingdom "only" the other intituled "An Act to prevent the clandestine running of "Goods &c and to subject Copper Ore of the production of the British "Plantations to such Regulations as other enumerated Commodities of "the like production are subject continued by An Act passed in the Eighth year of His said late Majesty's Reign ; and still in force, all Rice (except under the Regulations prescribed in the Acts of the third year of His late Majesty's Reign, and the fourth and fifth years of our Reign, Molasses, Furs, Hemp, Pitch, Tar, Turpentine, Masts, Yards, Bowsprits, and Copper Ore, and by An Act passed, in the fourth year of Our Reign, all Coffee, Pimento, Cocoa Nuts, Whale Fins, Raw Silk, Hides, and Skins, Pot, and Pearl Ashes of the growth, production, or Manufacture of any British Colony or Plantation in America, under the like Securities and Penalties restrained to be imported into this Kingdom as the other above mentioned enumerated Commodities, And whereas by an Act passed in the fifth year of

Our Reign, intituled "An Act for more effectually preventing the Mischiefs "arising to the Revenue and Commerce of Great Britain and Ireland from "the illicit and clandestine Trade to, and from the Isle of Man" no Rum or other Spirits shall be shipped or laden in any British Colony or Plantation in America, but on condition that the same shall not be carried to, or landed in the Isle of Man, under the like Securities, Penalties, and Forfeitures ; And whereas by another Act made in the Sixth year of Our Reign, intituled "An Act for opening and establishing certain Ports in the "Islands of Jamaica, and Dominica, for the more free importation and "exportation of certain Goods and Merchandizes, for granting certain Duties "to defray the expences of opening, maintaining, securing, and improving "such Ports, for ascertaining the duties to be paid upon importation of Goods "from the said Island of Dominica into this Kingdom, and for securing "the Duties upon Goods imported from the said Island into any other "British Colony" all Wool, Cotton-Wool, Indigo, Cochineal, Fustick, and all manner of dying Drugs, or Woods, Drugs used in Medicine, Hairs, Furs, Hides and Skins, Pot and Pearl Ashes, Whalefins, and Raw Silk, of the growth and produce of any foreign Colony, or Plantation, shall upon the exportation thereof from either of the said Islands of Dominica or Jamaica, be imported from thence directly into Great Britain, under the like Securities, Penalties, and Forfeitures, and by the said Act of the sixth year of Our Reign, no Goods whatever shall, or may be exported from the said Island of Dominica, to any Port of Europe to the northward of Cape Finisterre, except to Great Britain, and such Goods shall be there landed under the same Securities, Regulations and restrictions and subject to the like Penalties and Forfeitures, you are therefore to take particular Care, and give the necessary directions that the true intent and meaning of all the said Acts be strictly and duly complied with.

6. You shall carefully examine all Certificates which shall be brought to you of Ships giving Security in this Kingdom to bring their Lading of Plantation Goods hither, as also Certificates of having discharged their Lading of Plantation Goods in this Kingdom, pursuant to their Securities ; And whereas the better to prevent any of the aforesaid Certificates from being counterfeited, the Commissioners of Our Customs have thought fit to sign the same, It is therefore Our Will and Pleasure, that no such Certificates be allowed of, unless the same be under the hands and Seals of the Customer, Comptroller, and Collector of the Customs in some Port in this Kingdom or two of them, as also under the hands of four of the Commissioners of the Customs at London, or three of Our Commissioners of the Customs at Edinburgh, and where there shall be reasonable ground of Suspicion, that the Certificate of having given Security in this Kingdom is false and counterfeit, in such case, you or the Person or Persons appointed under you shall require and take sufficient Security for the discharge of the Plantation Lading in this Kingdom, and where there shall be cause to suspect that the Certificate of having discharged the Lading of Plantation Goods

in this Kingdom is false and counterfeit, you shall not cancel or vacate the Security given in the Plantations, until you shall be informed from the Commissioners of Our Custom in Great Britain, that the Matter of the said Certificate is true ; And if any Person or Persons shall counterfeit, raze, or falsify any such Certificate for any Vessel or Goods, or shall knowingly or wittingly make use thereof, you shall prosecute such Person for the forfeiture of the Sum of five hundred Pounds according to the Clause of the aforesaid Act for preventing Frauds, and regulating Abuses in the Plantation Trade ; and pursuant to the said Act you shall take care, that in all such Bonds to be hereafter given or taken in the Province under your Government, the Sureties therein named be persons of known residence and ability there, for the value mentioned in the said Bonds, and that the Condition of the said Bonds be within eighteen Months after the Date thereof, the danger of the Seas excepted, to produce a Certificate of having landed and discharged the Goods therein mentioned in One of Our Plantations, or in this Kingdom, otherwise to attest the Copy of such Bonds under your hand and Seal, and to cause Prosecution thereof. And it is Our further Will and Pleasure that you do give Directions to the Naval Officer or Officers not to admit any Person to be Security for another, who had Bonds standing out and undischarged, unless he be esteemed responsible for more than the Value of such Bonds.

7. And you are also to give Directions to the said Naval Officer or Officers to advise with the Collector of the Port or District in taking Bonds, and not to admit any Person to be Security in any Plantation Bond until approved by the said Collector ; And whereas Lists of all Certificates, granted in South Britain for the discharge of Bonds given in the Plantations, are every Quarter sent to the Collectors of the Districts, where such Bonds are given, the said Naval Officer or Officers is, or are to take care, that no Bond be discharged or cancell'd by him or them without first advising with the Collector, and examining the said List ; to see that the Certificate is not forged or counterfeited ; And whereas the Principal Officers of Our Customs in America are directed to examine from time to time, whether the Plantation Bonds be duly and regularly discharged, you are to give directions, that the said Officers be permitted to have recourse to the said Bonds, as well as the Book or Books in which they are or ought to be entered and to examine as well whether due Entry thereof be made, as whether they are regularly taken and discharged, and where it shall appear, that Bonds are not regularly discharged, you are to order that, such Bond be put in Suit.

8. You are to understand that the Payment of the rates and Duties imposed by An Act intituled, "An Act for the encouragement of the Green- "land and Eastland Trades ; and for the better securing the Plantation "Trade" passed in the twenty fifth Year of the Reign of King Charles the Second, on the several Plantation Commodities therein enumerated doth not give Liberty to carry the said Goods to any other Place, than to some

of Our Plantations, or to Great Britain only, and that, notwithstanding the Payment of the said Duties, Bond must be given to carry the said Goods to some of the said Plantations, or to Great Britain, and to no other Place.

9. You shall every three Months, or oftener, or otherwise as there shall be opportunity of Conveyance, transmit to the Commissioners of Our Treasury, or our High Treasurer for the Time being, and to the Commissionrs of Our Customs in London, a list of all Ships and Vessels trading in the said Province according to the Form and Specimen hereunto annexed, together with a List of the Bonds taken, pursuant to the Act passed in the twenty second and twenty third years of King Charles the Second's reign, intituled "An Act to prevent planting Tobacco in England ; and for regulat- "ing the Plantation Trade ;" and you shall cause Demand to be made of every Master at his clearing of an Invoice of the Contents and Quality of his Lading &c, according to the Form hereunto also annexed, and inclose a Copy thereof by some other Ship, or for want of such Opportunity by the same Ship under Cover, sealed, and directed to the Commissioners of Our Treasury, or Our High Treasurer for the Time being, and to the Commissioners of Our Customs in London, and send another Copy of the said Invoice in like manner to the Collector of that Port, in this Kingdom for the Time being, to which such Ship shall be said to be bound.

10. Whereas by the aforesaid Act for the Encouragement of Trade, no Commodities of the Growth, Production, or Manufacture of Europe, except Salt for the Fishery of New England and Newfoundland, Wines of the growth of ye Madeira's or Western Islands or Azores, Servants and Horses from Ireland and all sorts of Victuals of the growth and production of Ireland, and salt to the Provinces of Pennsylvania, New-York, Nova Scotia, and Quebec, in pursuance of five Acts passed in the Thirteenth year of the reign of King George the First, in the Third year of His late Majesty's reign, and in the Second, Fourth and Sixth years of Our Reign, shall be imported into any of Our Colonies or Plantations, but what shall be bonâ fide, and without Fraud Laden and Shipped in Great Britain, and in Ships duly qualified, you shall use your utmost endeavour for the due observation thereof ; and if contrary hereunto any Ship or Vessel shall import into our said Province under Your Government any Commodities, of the growth, production, or Manufacture of Europe, but what are before excepted, of which due Proof shall not be made, that the same were Shipped or Laden in some port of Great Britain by producing Cocquets or Certificates under the hands and Seals of the Officers of Our Customs in such Port or Place where the same were Laden, such Ship or Vessel and Goods shall be forfeited ; and you are to give in Charge, that the same be seized and prosecuted accordingly.

11. And in order to prevent the acceptance of forged Cocquets or Certificates which hath been practised to Our great Prejudice, you are to give effectual Orders, that for all such European Goods as by the said Act

are to be shipp'd and laden in Great Britain Cocquets for the same from hence be produced to the Collectors or other Officers of Our Customs in Our aforesaid Province under your Government for the Time being, before the unlading thereof, and you shall give Order that no European Goods be landed but by Warrant from the said Collector in the Presence of an Officer appointed by him, and for the better prevention of Frauds of this Kind you shall take care, that according to the said Act of Trade, no Ship or Vessel shall be permitted to lade or unlade any Goods or Commodities whatsoever, until the Master or Commander thereof shall first have made known to you, or such Officer, or other Person as shall be thereunto authorized and appointed, the arrival of such Ship or Vessel, with her Name, and the Name and Surname of the Master, and hath shown, that she is a Ship duly navigated, and otherwise qualified according to Law, and hath deliver'd to you, or such other Person, as aforesaid, a true, and perfect Inventory of her lading, together with the Place or Places, in which the said Goods were laden, and taken into the said Ship or Vessel, under forfeiture of such Ships and Goods.

12. You shall not make or allow of any laws, Bye Laws, Usages or Customs in Our said Province under your Government, which are repugnant to the Laws herein before mentioned, or any of them or to any other Law already made or hereafter to be made in this Kingdom, so far as such Laws relate to, and mention the said Plantations, but you shall declare all such Laws, Bye Laws, Usages, or Customs in Our said Province under Your Government, which are any wise repugnant to the said Laws, or any of them, to be illegal, null and void, to all intents and Purposes whatsoever

13. You shall be aiding and assisting to the Collector and other Officers. of Our Admiralty, and Customs appointed, or that shall hereafter be appointed by the Commissioners of Our Customs in this Kingdom, by and under the Authority and Direction of the Commissioners of Our Treasury, or Our High Treasurer of Great Britain for the time being, or by Our High Admiral or Commiss[rs] for executing the Office of High Admiral of Great Britain for the Time being, in putting in execution the several Acts of Parliament before mentioned ; and you shall cause due Prosecution of all such Persons, as shall any ways hinder or resist any of the said Officers of Our Admiralty or Customs in the performance of their duty. It is likewise our Will and Pleasure, and you are hereby required by the first Opportunity to move the Legislative Council of Our said Province that they provide for the expence of making Copies for the principal Officers of Our Customs, in Our said Province for the time being, of all Acts and Papers, which bear any relation to the Duty of their Office ; and in the mean time you are to give Orders, that the said Officers for the time being as aforesaid, be allowed a free inspection in the publick Offices within Your Government of all such Acts and Papers without paying any Fee or Reward for the same.

14. Whereas the Commissioners appointed for collecting the Six Pence per Month from Seamen's Wages for Our Royal Hospital at Green-

wich, pursuant to an Act of Parliament passed in the second year of His late Majesty's Reign, intituled "An Act for the more effectual collecting "in Great Britain and Ireland, and other parts of His Majesty's Dominions "the duties granted for the Support of the Royal Hospital at Greenwich," have given Instructions to their receivers in foreign Ports for their Government therein. It is therefore Our Will and Pleasure, that you be aiding and assisting to the said Receivers in your Government in the due execution of their Trusts.

15. And whereas by an Act passed in the Sixth year of His late Majesty's reign, intituled "An Act for the better securing and encouraging the Trade "of His Majesty's Sugar Colonies in America" and by another Act passed in the fourth year of Our Reign, intituled "An Act for granting certain "duties in the British Colonies and Plantations in America &c[a]" Duties are laid on all Sugar Panales, and several other Species of Goods therein enumerated of the Produce & Manufacture of any of the Plantations, not in Our Dominion, which shall be imported into any Our Colonies or Plantations ; notwithstanding which, we are informed, that great Quantities of foreign Sugar, Paneles, and other Goods mentioned in the aforesaid Acts, are clandestinely landed in Our Plantations without Payment of the said Duties. Our Will and Pleasure is, that you be aiding and assisting to the Collectors and other Officers of Our Customs, in Your Government, in collecting the said Duties, and seizing all such Goods, as shall be so clandestinely landed, or put on Shore without paym[t] of the Duties, and you shall cause due Prosecution of all such Sugar Paneles, and other Goods, as shall be seized for Non Payment of the Duties, as well as the Persons aiding or assisting in such unlawful Importations, or that shall hinder, resist, or molest the Officers in the due Execution of the said Laws, and you are to observe that Our share of all Penalties and Forfeitures, so recovered is pursuant to the said Act made in the fourth year of Our Reign to be paid into the hands of Our Collector of the Customs at the Port or Place, where the same shall be recovered for Our Use.

16. You shall take care that upon any Actions, Suits, and Informations that shall be brought, commenced or entered in Our said Province under your Government upon any Law or Statute concerning Our Duties, or Ships, or Goods, to be forfeited by reason of any unlawful Importations or Exportations there be not any Jury, but of such as are Natives of Great Britain, or Ireland, or are born in any of Our said Plantations.

17. You shall take care that all places of Trust in the Courts of Law, or in what relates to the Treasury of our said Province under your Government, be in the Hands of Our Native-born Subjects of Great Britain or Ireland or the Plantations.

18. And that there may be no Interruption or Delay in matters of Prosecution and Execution of Justice in Our Courts of Judicature within Our said Province under your Government by the death or removal of any of Our Officers employed therein until We can be advised thereof, and appoint

others to succeed in their Places, you shall make choice of Persons of known Loyalty, Experience, Diligence, and Fidelity to be employed for the purposes aforesaid until you shall have Our Approbation of them or the Nomination of others from hence.

19. You shall from time to time correspond with the Commissioners of Our Customs in London for the Time being, and advise them of all Failures, Neglects, Frauds, and Misdemeanours of any of the Officers of Our Customs in Our said Province under your Governm[t] and shall also advise them, as occasion shall offer, of all occurrences necessary for their Information relating either to the aforesaid Laws of Trade and Navigation, or to Our Revenue of Customs and other Duties under their management, both in Great Britain and the Plantations.

20. If you shall discover, that any Persons or their Assigns claiming any Right or Propriety in any Island or Tract of Land in America, by Charter or by Letters Patent shall at any time hereafter, alien, sell or dispose of such Island, Tract of Land, or Propriety other than to Our natural born Subjects of Great Britain, without the Licence or Consent of Us, our Heirs, or Successors signified by Our or their Order in Council first had and obtained, You shall give Notice thereof to Us, and to Our Commissioners of Our Treasury or to Our High Treasurer of Great Britain for the Time being.

21. Whereas by the aforesaid Act for preventing Frauds, and regulating Abuses in the Plantation Trade, it is provided for the more effectual prevention of Frauds which may be used to elude the Intention of the said Act by colouring foreign Ships under British Names ; That no Ship or Vessel shall be deemed or pass as a Ship of the Built of Great Britain or Ireland, Guernsey, Jersey, or any of Our Plantations in America, so as to be qualified to Trade to, from, or in any of Our said Plantations until the Person or Persons claiming Property in such Ship or Vessel shall register the same in manner thereby directed, You shall take care that no foreign Built Ships be permitted to pass as a Ship belonging to Our kingdom of Great Britain, or Ireland, until proof be made upon Oath of one or more of the owners of the said Ship before the Collector or Comptroller of Our Customs in such Port to which she belongs or upon like Proof before yourself, with the principal Officer of Our Revenue residing in Our aforesaid Province, under your Government, if such Ships shall belong to the said Province which Oath you, and the Officers of Our Customs respectively are authorized to administer in manner thereby directed, and being attested by you and them so administering the same, and registered in due form according to the specimen hereunto annexed, you shall not fail immediately to transmit a Duplicate thereof to the Commissioners of Our Customs in London in order to be entered in a general register to be there kept for that purpose with Penalty upon every Ship or Vessel trading to, from, or in any of Our said Plantation in America as aforesaid, and not having made Proof of her Built and Property, as by the afore-mentioned Act is directed, and shall be

liable to such Prosecution and Forfeiture as any Foreign Ship (except Prize condemned in Our high Court of Admiralty) would for trading with our Plantations, by the said Law be liable unto, with this Proviso, that all such Ships as have been or shall be taken at Sea, by Letters of Marque or Reprizal and Condemnation thereof made in Our High Court of Admiralty as lawful Prize, shall be especially registered, mentioning the Capture and Condemnation instead of the Time and Place of Building, with Proof also upon Oath, that the entire Property is British before any such Prize be allowed the privilege of a British Built Ship according to the meaning of the said Act, And that no Ships Name registered be afterwards changed without registering such Ship de Novo, which by the said Act is required to be done upon any Transfer of Property to another Port, and delivering up the former Certificate to be cancelled, under the same Penalties, and in like Method and in case of any Alteration of Property, in the same Port, by the Sale of one or more Shares in any Ship after registering thereof, such Sale shall always be acknowledged by Endorsement on the Certificate of Register before two Witnesses, in order to prove, that the entire property in such Ship remains to some of Our Subjects of Great Britain, if any Dispute shall arise concerning the same.

22. Whereas by the Act passed in the Twenty first year of His late Majesty's Reign for encouraging the making of Indigo in the British Plantations in America, as the same stands continued & amended by an Act passed in the third year of Our Reign, a premium of four pence p Pound is allowed on the Importation of Indigo of the Growth of the British Plantations; and there are likewise contained in the said Act several Provisions to prevent Frauds, by importing foreign Plantation-made Indigo, or any false Mixtures in what is made in the British Plantations, with a view to recover the said Premium ; It is therefore Our Will & Pleasure, that if there now are, or hereafter shall be any Plantations of Indigo within Our said Province under your Government, you do take particular Care, that the said Provisions be duly and punctually complied with, and do likewise from time to time transmit to us, by One of Our Principal Secretaries of State, an Account of all such Plantations of Indigo, with the Names of the Planters, and the Quantity of Indigo they make, as also the Quantity of such Indigo exported from the said Province, distinguishing the time, when exported, and the Port where shipped, the Names of the Vessels, and the Port, to which bound ; and if there be any foreign Indigo imported into the said Province, It is Our further Will & Pleasure, that you do in like manner transmit an Account of such foreign Indigo imported, distinguishing the time when, and the Place from whence imported, together with an Account of such foreign Indigo exported, and the Port where shipped, the Names of the Vessels, and the Port to which bound.

23. Whereas by the Act passed in the tenth year of the Reign of King William the Third, "to prevent the Exportation of Wool out of the Kingdom "of Ireland, and England into foreign Parts, and for the Encouragement

"of the Woollen Manufactures in the Kingdom of England," It is amongst other Things, therein enacted, that no Wool, Woolfels, Shortlings, Mortlings, Wool-flocks, Worsted-Bays, or Kerseys, Says, Friezes, Druggets, Cloth Serges, Shalloons, or any other Drapery Stuffs, or Woollen Manufactures whatsoever made or mixed with Wool or Woolflocks, being of the Product or Manufacture of any of the British Plantations in America, shall be laden or laid on board in any Ship or Vessel in any Place or Port within any of the said British Plantations, upon any pretence whatsoever, as also that no such Wool, or other the said Commodities, being of the product or Manufacture of any of the said British Plantations, shall be loaden upon any Horse, Cart, or other Carriage, to the intent & purpose to be exported, transported, carried or conveyed out of the said British Plantations to any other of our Plantations, or to any other place whatsoever, upon the same & like Pains, Penalties & Forfeitures to, and upon all the Offender and Offenders therein, within all and every of Our said British Plantations respectively, as are provided and prescribed by the said Act for the like Offences committed within Our Kingdom of Ireland ; You are to take effectual Care, that the true Intent & Meaning thereof, so far forth as it relates to you, be duly put in Execution.

24. In the Act made in the twenty fourth year of His late Majesty's Reign, "for the more effectually securing the Duties upon Tobacco," there is a Clause to prevent Frauds in the Importation of Bulk-Tobacco, enacting that no Tobacco shall be imported into this Kingdom, otherwise than in *Cask*, *Chest*, or *Case*, containing Four Hundred & fifty Pounds Weight of Tobacco each, under Penalty of the Forfeiture thereof ; you shall take care, that this part of the said Act be made publick, that none may pretend Ignorance : and that the true Intent & Meaning thereof be duly put in execution within your Government.

25. And Whereas His Majesty King George the First was informed, that a Clandestine Trade had been carried on, as well by British as foreign Ships from Madagascar, and other Parts beyond the Cape of Bona Esperanza within the Limits of Trade granted to the united East India Company, directly to Our Plantations in America, to the great Detriment of these Realms, and in breach of the several Laws in force relating to Trade & Navigation, Our Will & Pleasure is, that you, the said Guy Carleton, or in your Absence the Commander in Chief of Our said Province of Quebec for the time being, duly observe and cause to be strictly observed the several Laws & Statutes now in force for the regulating of Trade and Navigation, particularly the several Acts of Parliament already mentioned in your general and these Instructions ; and in order to the better Execution of the Laws & Statutes abovementioned, upon the first notice of the Arrival of any Ship or Ships within the Limits of any Port of, or belonging to your Government, which have or are suspected to have on board any Negroes, Goods, or Commodities of the Growth, Produce or Manufacture of the East Indies, Madagascar, or any Parts or Places beyond the Cape of Bona

Esperanza, within the Limits of Trade granted to the United East India Company, pursuant to the aforementioned Act of the Ninth & Tenth of King William, you shall immediately cause the Officers of our Customs in your Government, and any other Officers or Persons in aid of them, to go on board such Ship or Ships, and to visit the same, and to examine the Masters or other Commanders, the Officers & Sailors, on board such Ship or Ships, and their Charter Parties, Invoices, Cocquets, and other Credentials, Testimonials, or Documents ; and if they find, that such Ship or Ships came from the East Indies, Madagascar, or any other Parts or Places beyond the Cape of Bona Esperanza within the Limits of Trade granted to the said united East India Company ; and that there are on board any such Goods, Commodities, or Negroes, as abovementioned, that they do give notice to the Master or other Person having then the Command of such Ship or Ships forthwith to depart out of the Limits of your Government, without giving them any Relief, Support, Aid or Assistance, altho' it should be pretended, that such Ship or Ships, were or the same really should be in Distress, Want, Disability, Danger of sinking, or for, or upon any other Reason or Pretence whatsoever, And that you Our Governor or Commander in Chief do by no means suffer any Goods, Merchandize, or Negroes from on board such Ship or Ships to be landed or brought on shore upon any Account or Excuse whatsoever ; And it is Our further Will and Pleasure, that, if any such Ship or Ships, being foreign, having on board any such Goods, Merchandize, or Negroes, do not upon notice given to the Master or other Person having the Command thereof, as soon as conveniently may be, depart out of the Limits of your Government, and from the Coasts thereof, without Landing selling or Bartering any of the said Goods, or Negroes, you our Governor or the Commander in Chief for the time being, shall cause the said Ship or Ships, and Goods and Negroes to be seized and proceeded against according to Law ; But if such Ship or Ships, having such Goods or Negroes on board, and entering into any Port or Place, or coming upon any of the Coasts or Shores of our said Province under your Government, do belong to Our Subjects, and do break Bulk, or sell, barter, exchange, or otherwise dispose of the said Goods, or Negroes, or any part thereof, contrary to Law ; you are to take care, that such Ship or Ships, with the Guns, Tackle, Apparel and Furniture thereof, and all Goods and Merchandize laden thereupon, and the Proceeds and Effects of the same be immediately seized ; and that the Laws in such case made and provided be kept in execution with the greatest Care, Diligence, and Application ; But if any Ship belonging to the Subjects of any foreign State or Potentate, ꝗaving on board any Negroes, or East India Commodities, shall be actually ꝗound to some Place or Port in the West Indies belonging to any foreign Prince or State, from some European Port, and such Ship shall happen to be driven in by necessity, and be in real Distress, the same may be supplied with what is absolutely necessary for her Relief ; but you shall not take, have, or receive, nor permit or suffer any Person to take, have or receive,

any Negroes, or other the said East India Commodities, in payment or satisfaction for such Relief ; that if any Officer of our Customs, or other Officer employed by you our Governor or Commander in Chief in visiting, searching, or seizing such Ship or Ships, Goods, Merchandize, or Negroes, be corrupt, negligent or remiss in the discharge of his Duty therein, We do hereby require you to suspend him from the execution of his said Office ; and that you do by the first Opportunity send an Account of such Officer's Behaviour to Us by one of Our Principal Secretaries of State, that care may be taken, that such Officer be removed from his Employment, and further punished according to his Demerit,— And Our further Will and Pleasure is, that you Our Governor or Commander in Chief, do constantly from time to time, and by the first Opportunity that shall offer, send us by one of Our Principal Secretaries of State, true, full, and exact Accounts of your Proceedings, and of all other Transactions & Occurrences in, or about the Premisses, or any of them.

26. And Whereas, notwithstanding the many good Laws made from time to time, for the preventing of Frauds in the Plantation Trade, it is manifest, that very great Abuses have been and continue still to be practised to the prejudice of the same, which Abuses must needs arise either from the Insolvency of Persons, who are accepted for Security, or from the Remissness or Connivance of such, as have been, or are Governors in the several Plantations, who ought to take care, that those persons, who give Bond, should be duly prosecuted in case of non-performance ; You are to take notice, that we take the Good of Our Plantations and the Improvement of the Trade thereof, by a strict and punctual Observance of the several Laws in force concerning the same, to be of so great Importance to the Benefit of this Kingdom, and to the Advancing the Duty of Our Customs here, that, if We shall hereafter be informed, that at any time there shall be any failure in the due Observance of those Laws, and of these present Instructions, by any wilful fault or neglect on your part, We shall esteem such Neglect to be a Breach of the aforesaid Law ; And it is our fixed and determined Will & Pleasure, that you or the Commander in Chief respectively be for such Offence, not only immediately removed from your Employments, and be liable to the fine of one Thousand Pounds, as likewise suffer such other Fines, Forfeitures, Pains & Penalties, as are inflicted by the several Laws now in force relating thereunto ; but shall also receive the most rigorous Marks of Our highest Displeasure, and be prosecuted with the utmost Severity of the Law for your Offence against Us in a Matter of this consequence, that We now so particularly charge you with.

G: R.

QUEBEC. A List of Ships & Vessels, which have entered inwards in the Port of in the Province of Quebec between the day of and the day of following, being the Quarter ended at with the particular Quantity & Quality of the Loading of each Vessel.

| Time of Entry | Ship's Name | Master's Name | Built | Number of | | | Where & when built | Where & when registered | Owner's Names | General Cargoe | | From whence | Where & when Bond given | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Tons | Guns | Men | | | | | | | | |
| | | | | | | | | | | N.B.—The particular Quantity & Quality of the Loading must be mentioned under these Colums. | | | | |

In the Register of Prize Ships the Capture & Condemnation must be also specially mentioned, instead of the time & place of Building; List of all Ships trading to, or from the Plantations, or from one Plantation to another, to be prepared Quarterly by the Collector of Customs, and the Naval Officers in the respective Plantations, in order to be transmitted by you to the Lord High Treasurer, or Lords Commissioners of the Treasury for the time being, to the Lords Commissioners for Trade and Plantations, and to the Commissioners of His Majesty's Customs at London by the first Opportunity of Shipping Each Quarter.

QUEBEC. A List of Ships and Vessels, which have cleared outwards at the Port of in the Province of Quebec between the Day of and the day of following, being the Quarter ended at with the particular Quantity & Quality of the Loading of each Vessel.

| Time of Clearing | Ship's Name | Master's Name | Built | Number of | | | When & where built | Where & when registered | Owner's Names | General Cargoe | | Whither bound | Where & when Bond given | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Tons | Guns | Men | | | | | | | | |
| | | | | | | | | | | N.B.—The particular Quantity & Quality of the Loading must be mentioned under these Colums. | | | | |

Endorsed: GUY CARLETON Esq[r] Governor of Quebec
Trade Instructions
Dated 3[d]{t} Jan[y] 1775.

C.O. (Quebec 1768-1787 Vol. I.)

[L.S.] George R.

Additional Instructions to Our Trusty & welbeloved Guy Carleton Esq[r] Our Captain General & Governor in Chief in & over Our Province of Quebec in America, & of all Our Territories dependent thereupon ; Or to the Commander in Chief of Our said Province for the time being. Given at Our Court at S[t] James's the thirteenth day of March 1775. In the fifteenth year of Our Reign.

Whereas We did by Our general Instructions to you, bearing date at Our Palace of S[t] James's the day of Declare Our Royal Will & Pleasure that sundry Salaries & Allowances therein mentioned, should be discharged & paid out of any Revenue arising to Us within Our said Province of Quebec, or out of such other Monies as should be granted or appropriated to the Use & Service of Our said Province; the said Salaries & Allowances to commence on, & to be payable from & after the first day of May 1775. It is Our further Will & Pleasure, that over and above the several Salaries and Allowances in the said Instructions mentioned & set down—You do pay, or cause to be paid annually out of the said Revenue or Monies granted or appropriated as aforesaid, unto Our Trusty & welbeloved Edward Bishopp Esq[r] or to his lawful Attorney, for & during Our Will & Pleasure, the further Sum of One Hundred Eighty two Pounds ten Shill[s] the said annual Payment or Allowance to commence on the first day of May next ensuing the date hereof.

G: R.

C.O. (Quebec 1768-1787 Vol. I.)

[L.S.] George R.

Additional Instructions to Our Trusty & Welbeloved Guy Carleton Esq[r] Our Captain General and Governor in Chief in and over Our Province of Quebec in America and of all Our Territories, dependant thereupon, or to the Commander in Chief of Our said Province for the time being.—Given at Our Court at S[t] James's the fourteenth day of November 1775, In the sixteenth year of Our Reign.—

Whereas We did by Our General Instructions to you bearing date at Our Palace of S[t] James's, the 3[d] day of January 1775 Declare Our Royal Will and Pleasure that sundry Salaries and Allowances therein mentioned should be discharged & paid out of any Revenue arising to Us within Our said Province of Quebec, or out of such other Monies as should be granted or appropriated to the Use and Service of Our said Province the said Salaries and Allowances to Commence on and to be payable from and after the first Day of May last ; It is Our further Will & pleasure that over and above the several Salaries and Allowances in the said Instructions mentioned and set down, You do pay or cause to be paid annually out of the said Revenue or Monies granted or appropriated as aforesaid unto Our Trusty and Wel-

beloved John Christopher Roberts Esquire, or to his lawfull Attorney the further Sum of Three hundred and fifty pounds ; the said annual payment or Allowance to Commence on the first day of May last.—

G. R.

## DRAUGHT OF AN ORDINANCE FOR ESTABLISHING COURTS OF JUSTICE IN THE PROVINCE OF QUEBEC.[1]

This Ordinance is supposed to pass & be published after the 1st day of May, 1775.

Whereas by an Act of Parliament passed at Westminster in the 14th year of His Majesty's reign intituled "An Act for making more effectual provision for the Government of the Province of Quebec in North America" the several Courts of Justice then established in the said Province, together with all Commissions to Judges and other Officers concerned in the Administration of Justice, are revoked, annulled and made void.

And it being highly expedient and necessary that other Courts of Judicature with powers & authorities better adapted to the circumstances & situation of the Province, should be established in their place.

Be it enacted & ordained by His Excellency the Governor and Commander in chief for this Province by and with the advice & consent of the Council of the same, And it is accordingly enacted & ordained by the authority aforesaid that from and after the day of the date of the publication of this Ordinance, the following Courts of Criminal and Civil Jurisdiction to be held before the persons & at the days and places herein after set forth, with the powers & authority herein after more particularly described, be constituted & the same are hereby, & by the authority aforesaid constituted limited & appointed to take place in the several parts of the Province herein after mentioned for the due execution of the Laws & the Administration of Justice throughout the same as described and bounded by the said Act of Parliament.

And first that for the cognisance of all Pleas of the Crown & for the trial of all manner of Offences whatsoever as well capital as other inferior Crimes & misdemeanors done, committed & perpetrated or to be done committed & perpetrated

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[1] C.O. 42, Vol. 14, p. 28.

This is the full text of the proposed Ordinance draughted by Chief Justice Hey, and referred to in the despatch of Dartmouth to Carleton, 10th December, 1774, see p. 584 and footnote 2 on the same page. As stated by Dartmouth, it expresses "His Majesty's gracious Intentions with respect to the plan of Judicature that is to be established." Although, owing to the rapid development of the troubles in America, the invasion of Canada, and the interruption of the functions of the Legislative Council from September, 1775, to January, 1777, the draught Ordinance did not become law, yet it is important in view of much subsequent controversy as to the intentions of the British Government and the effect of the Quebec Act, with reference to the measure of completeness with which the old French Civil Law and its machinery were to be restored in Canada. An outline of this proposed Ordinance is given in the Instructions to Governor Carleton, with reference to the establishment of Courts and the administration of the law, especialy in articles 12 to 15 inclusive. See pp. 59 9—600.

by any person or persons whatsoever within the Province, together with all and every accessory & accessories to the same, there be constituted & the same is hereby, and by the authority aforesaid erected, constituted and appointed one Supreme Court of Criminal jurisdiction in & over the whole Province of Quebec by the name style & title of the Court of King's Bench; to hear and determine according to the Laws of that part of Great Britain called England, & the Laws, Ordinances and Regulations of the said Province of Quebec hereafter in that behalf to be made ordained and published.

*N.B. If after this ordinance is passed & before the arrival of the Chief Justice it should be necessary to hold a Court of Criminal jurisdiction, I apprehend it will also be necessary to re-enact the ordinance vesting the power of the Chief Justice in the hands of Commrs, so far as relates to their Criminal Jurisdiction.

Which Court so constituted and appointed as aforesaid shall be held before the Chief Justice of the Province for the time *being only*,* to whom full power jurisdiction and authority is hereby given and granted to hear & determine all matters of a Criminal nature whatsoever & the offenders therein with their accessories & accomplices to imprision, try, convict & punish in as large & ample a manner & according to the same rules & forms of proceedings as to any Chief Justice of the Province aforesaid has at any time been given & granted, or the Court of King's Bench at Westminster hath; or of right ought to have, exercise & enjoy.

And for the more speedy Administration of Justice & to prevent as much as possible the severity of long & tedious imprisonments, It is further ordained & enacted that the Chief Justice shall hold a Court of Oyer Terminer & Goal delivery three times in every year at the Town of Quebec, & twice in every year at the Town of Montreal that is to say one Court at or on some day in the month of one other Court at or on some day in the month of & one other Court at or on some day in the month of in & for the District of Quebec, at the Town of Quebec & one Court at or on some day in the month of & one other Court at or on some day in the month of in every year in for the District of Montreal in the Town of Montreal, & as much oftner as well at Quebec as Montreal, as the Chief Justice of the Province in his discretion shall think necessary & the state of the Goal shall require allowing always 15 days between the Teste and Return of the precept for holding such Courts—At which days & times the said Court of King's Bench at Quebec & Montreal shall sit & continue to sit 'till every prisoner in the Goal shall be tried, convicted or acquitted & discharged & the Goal fully delivered, unless the court shall see cause to the contrary, in which case it shall be lawful for them to remand any Prisoner or Prisoners, & put off his her or their trial to the next Court.

Provided always, & it is further enacted & ordained that from and after the publication of this Ordinance it shall not be lawful to or for any judge or judges having Criminal Jurisdiction, to direct, order or sentence any felon or felons, convict to be burned in the hand; but such felon or felons convict, as by the Laws England would be liable to be burned in the hand, shall from hence forth be punished by fine & imprisonment, at the discretion of the Court before whom such felon or felons shall be convicted.

And provided also that in all Cases of felony where by any Act of Parliament power is given to the judge or judges of any Court of Criminal Jurisdiction in England to transport any felon or felons to any of His Majesty's Plantations in America, it shall & may be lawful to and for the Court before whom any such felon or felons shall be convicted, & they are hereby authorized & empowered to assign over & transfer such felon or felons convict for the term of 7 or 14 years or other less or greater term according to the nature of their offence, to the use of any person or persons, or his her or their assigns, who shall be willing to contract for the same to be by him or them so contracting, kept to hard labour & employed in some public work, or in the Fisheries or other useful Service, & the person or persons so contracting, shall by virtue of such Order of Assignment & transfer have a property in the service of such felon or felons for the term of 7 or 14 years or such other term as shall be made part of the Condition of the said transfer & Punishment.

And in case such felon or felons so transferred as aforesaid shall, during any part of the term or terms for which they are condemned to serve refuse to obey the commands of such person or persons to whom they are consigned, their Agents, Overseers or Managers, or otherwise behave themselves disorderly, It shall & may be lawful to and for such person his Agents, Overseers & Managers to confine such felon or felons & put them in irons & feed them upon bread & water only, and give them such corporal chastisement & correction as, without breaking any limb or endangering their lives, may with safety be inflicted.

And if any such felon or felons so assigned & conveyed shall run away from and leave the service of such person or persons to whom they are consigned, & be at large before the end of his, her or their term, he she or they shall be liable to be punished as any person or persons attained of felony without benefit of Clergy, & execution shall be awarded accordingly provided that it shall & may be lawful for His Majesty to pardon the said felon or felons & remitt any part of his and their Service; And that where any such felon or felons shall have served his

& their term for which they are sentenced, such service shall have the effect of a pardon for such Crime.

And every person or persons to whom any Court of Criminal Jurisdiction shall order any felon or felons to be transferred before any of them shall be delivered over to him or them, shall contract with such person as shall be appointed by the Court & give security that he will keep & employ the said felon or felons so transferred at hard labour as aforesaid for the term for which they shall be transferred, and that they nor any of them shall not be suffered to leave their service, or be at large by the wilful default of the person or persons contracting, or his, her, or their Assigns.

And it is further enacted and ordained that in all criminal cases whatsoever, no Indictment shall be quashed nor any Judgment arrested for want of form in any part of the Proceedings.

And for the better & more orderly Regulation & Establishment of the Courts of Civil Jurisdiction herein after to be appointed within the Province aforesaid It is Enacted and Ordained &c$^{a}$ That the Province of Quebec as limited & bounded by the said Act of the 14$^{th}$ of His present Majesty be divided into two Districts or Territories to be called & known by the names of the District of Quebec & Montreal—the District of Quebec to contain & comprehend so much of the said Province as lies to the Eastward of the river S$^{t}$ Maurice, & to the Eastward of a Line drawn from the head of the said river to the Northermost bounds of the said Province; and also so much of the said Province as lies to the Eastward of the river and of a Line drawn from the head of the said river to the Southmost bounds of of the said Province in case the said river shall be found to take its rise in the said Province; and all that part of the Province to the Westward and Southwestward of the said Rivers & Lines shall be within the District of Montreal.

N.B. There are two Rivers on the South side of the River S$^{t}$ Lawrence nearly opposite the River S$^{t}$ Maurice, the River du Chene & the River Puante; it is necessary to consult the Map to determine which to take.

In and over which Districts of Quebec and Montreal so divided as aforesaid it shall and may be lawful to & for His Majesty, His Heirs & Successors from time to time to appoint two Ministerial Officers by the name & title of Sheriffs to preside, that is to say—the Sheriff of Quebec in & over the District of Quebec & the Sheriff of Montreal in & over the District of Montreal.

And it is further enacted and Ordained &c$^{a}$ that in & for the Districts of Quebec & Montreal so described & bounded as aforesaid, there shall be erected, constituted & appointed & the same are hereby & by the Authroity aforesaid erected, constituted & appointed two Courts of Civil Jurisdiction, by

the name style & title of the Courts of Common Pleas to be kept & held at the Towns of Quebec & Montreal respectively, with full power and authority to hear & determine according to the Laws, Customs & usages of Canada as observed & received in the said Province before the conquest of the same by His Majesty's Arms, & according to such Laws, Ordinances and regulations as shall, from time to time, be enacted by the Legislative Council of the same; which Courts of Common Pleas at Quebec & Montreal so constituted as aforesaid shall be taken and adjudged to have each their separate jurisdictions independent of & unconnected with each other that is to say—the Court of Common Pleas at Quebec in and over all Causes arising or to arise within the District of Quebec and the Courts of Common Pleas at Montreal in and over all Causes arising or to arise within the District of Montreal.

And it is further enacted and ordained &c[a] That in the Courts of Common Pleas so constituted as aforesaid Four of His Majesty's antient British Subjects by Commission under the public Seal of the Province, shall sit as Judges, that is to say two of the said British Subjects in the Court of Quebec, & two other of the said British Subjects in the Court of Montreal, which Judges of the said Courts for the time being are hereby empowered & authorized to take cognizance of Pleas in all Civil Causes whatsoever as well between His Majesty and His Subjects, as between party and party whether real, personal or mixed, & the same to hear, adjudge & finally determine, and also to award costs between party and party as fully and amply to all intents and purposes whatsoever as the Court of Common Pleas at Westminster, or any Court of Civil Jurisdiction within His Majesty's Kingdom of England is or are authorized & empowered, or doth or may hear, adjudge determine and award.

And it is further Enacted and Ordained by the authority aforesaid that Too the Judges of the several Courts of Common Pleas as well in Quebec as Montreal so appointed as aforesaid, there be associated and joined in Commission two of His Majesty's Canadian Subjects by the name & names of Assistants or Assessors to the judges and Courts of Common Pleas as well in Quebec as Montreal respectively—that is to say—one such Canadian Subject as Assistant or Assessor to the judges & Court of the District of Quebec at Quebec, and one other such Canadian Subject as Assistant or Assessor to the judges & Court of the District of Montreal at Montreal.

Which said Assistants or Assessors shall be present at every Court and sit with the Judges of the said Courts respectively according to their District, & give their opinions and advice

in all Civil matters as well of Law as practice, as often as they shall be thereunto called by the judges of the said Court; but shall have no authority or power to attest or issue any process, nor have any voice nor give any Vote concerning any order, judgement or Decree, or otherwise interpose or meddle with any of the business of the said Court than by giving such Advice & Opinion as aforesaid when thereunto called upon & required so to do by the Judges of the said Court of Common Pleas respectively.

And whereas it is very expedient for the due administration of Justice in this Province that there should be frequent Sessions of the Courts of Civil jurisdiction therein established to the end that His Majesty's Subjects in the said Province may prosecute their just claims in the said Courts with expedition & obtain final judgement and execution within a reasonable time—Be it further Enacted &c—and it is accordingly Enacted &c—that for the hearing and determining all Matters wherein the Cause of Action shall exceed the sum of Ten Pounds sterling money of Great Britain in and for & until the end & expiration of this present year 1775 there shall be held two Sessions of the Court of Common Plea as well at Quebec as Montreal that is to say one Sessions of the Court of Common Pleas for the District of Quebec at Quebec on the day of and one other such Session as aforesaid on day of at Quebec as aforesaid, one Sessions of the Court of Common Pleas for the District of Montreal at Montreal on day of and one other such Sessions as aforesaid on day of at Montreal as aforesaid.

And from and after the End & Expiration of this present year, & in and for the year next ensuing—that is to say the year of Our Lord 1776, & in every year then after following, there shall be held 8 Sessions of the Courts of Common Pleas before the judges of the same that is to say 4 Sessions of the Courts of Common Pleas for the District of Quebec at Quebec, and 4 Sessions of the Courts of Common Pleas for the District of Montreal at Montreal by the Judges of the said Courts respectively on the days and at the times herein after following that is to say at Quebec for the district of Quebec

on the first day of
on the first day of
on the first day of
on the first day of

And at Montreal for the District of Montreal

on the first day of
on the first day of
on the first day of
on the first day of

except when any of the days so as aforesaid appointed for the holding any of the said Courts shall happen to be a Sunday, in which case the Sessions shall commence on the 2$^{d}$ or 3$^{d}$ of such month as the judges of the said Courts shall, in their discretion, think proper to appoint.

At which days and times so appointed as aforesaid, the said Courts of Common Pleas, as well at Quebec as Montreal, shall sit and continue to sit day after day on every day in the week, except Sundays, until the business of the said Court shall be finished unless the Judges of the said Courts shall be finished unless the Judges of the said Courts shall think fit at any time to adjourn the said Court unto some further day in the same Session or unto the first day of the next Session, which adjournments they are hereby empowered and authorized to make according to their own Discretion.

Provided always, and it is hereby further ordained & declared by the Authority aforesaid, That for the hearing & determining all Matters wherein the Cause of Action shall not exceed the sum of Ten Pounds, & where no title to Land is in question, the said Courts of Common Pleas as well at Quebec as Montreal, shall be open at all times, and they are hereby Commanded to be kept open at all times throughout the year except on Sundays, and for 3 weeks at seed time one Month at harvest, & a fortnight at Xmas and Easter; and except during such times as shall be appointed by the Judges for making their respective Circuits throughout the Province—And every Friday in every week throughout the year, except in such Vacations as aforesaid shall be a Court day for hearing & determining all Matters wherein the Cause of Action shall not exceed the sum of Ten Pounds, and where no Title to Land is in Question.

Provided also, and it is further Enacted and Ordained &c. by the Authority aforesaid, that from & after the Publication of this Ordinance, when any person or persons against whom any judgement or Judgements shall be obtained in either of the said Courts of Common Pleas, shall not have any Lands, Goods, or Effects wherewith to satisfy the same within the jurisdiction of that Court wherein such judgement or Judgements shall be obtained, but such person or persons shall have Lands, Goods & Effects within the jurisdiction of the other Court of Common Pleas that then and in that Case it shall and may be lawful to & for the judge or judges of the Court of the District in which such Judgement or judgements shall be obtained to award an Execution, or Executions to the Sheriff of the District in which such Lands Goods & Effects shall be found who shall before he proceeds to do anything therein carry such Writ or Writs of Execu-

tion to one of the Judges of the Court of the District in which such Lands Goods, or Effects shall be found, who is hereby authorized and required to indorse the same, which Writ or Writs of Execution being so endorsed as aforesaid, the Sheriff of the District in which such Lands Goods or Effects shall be found shall proceed to levy the debt & costs & make return thereof under his hand & seal to the Judge or Judges of the Court from whence such Writ or Writs of Execution was or were originally awarded.

And such Writ or Writs of Execution with the Return thereof under the hand & Seal of the Sheriff subscribing the same, shall be by him transmitted so soon after the making & subscribing thereof as conveniently may be, to the Sheriff of the District from when such Writ was originally awarded, who is hereby authorized & Commanded to deliver the same into the Court of Common Pleas, from whence such Writ was originally awarded, on the first Court Day next after the coming of the said Writ and Return into his hands, and the Judge or Judges of the said Court from whence such Writ of Execution was originally awarded, shall receive & record the same & the same shall be as valid and effectual to all intents & purposes as if the Sheriff making & subscribing the same, had himself been present & delivered it into Court with his own hand.

And in Case any person or persons against whom any such judgement or judgements as aforesaid, shall be obtained, not having any Lands, Goods, or Effects within the Province wherewith to satisfy the same shall usually reside without the Jurisdiction of the Court in which such Judgment or Judgments shall be obtain'd or being at the time of obtain$^{g}$ such Judgment or Judgments resident within the same shall alter his or their place of Residence and withdraw his or their Person or Persons from the Jurisdiction of the Court in which such Judgment or Judgments shall be obtained, it shall and may be lawfull to and for the Judge or Judges if the Court in which such Judgment or Judgments shall be obtained in all Cases, where such Writ may legally issue to award process against the Body of such Persons or Persons to the Sheriff of the District in which such Person or Persons shall reside or be found, which process being so indorsed as aforesaid the sheriff of the District in which such Person or Persons shall reside or be found shall proceed to Execute the same, and to arrest the Body and Bodies of such Person & Persons, & Him, Her & them to carry to the Common Goal of the District in which such Person or Persons shall be arrested, there to remain till the Debt and Costs are paid, or the parties be otherwise delivered by due Course of Law. Provided also the Sheriff

executing the said Writ and Writs and making returns thereof as aforesaid shall be answerable as well for the truth of the said Returns as for any Misbehavior Neglect and Comission in the manner of Executing the said Writs and making returns thereof before the Judge or Judges of the Court from whence such Writs originally issued and not before the Judge or Judges of the Court of the District to which he belongs.

And to prevent as much as may be all unnecessary delay and other evil consequences arising from vitious and informall pleadings, and that the Judges of the Courts of Common Pleas may be the better enabled to give Judgment upon the true Merits of every Case, it shall and may be lawfull for the Parties as well Plantiffs as Defendants, their Counsell Solicitors and Agents in all Cases where the Cause of Action shall exceed the sum of Ten pounds Sterling Money of Great Britain and where any title to Lands shall be in question to set forth under the hand of their Counsel Solicitor or Agent subscribing the same either in the French or English Language the whole matter of Complaint and defence in as full and ample a manner and in such form as they shall think proper and upon the coming in of the final Answer of the defendant or when the Pleadings between the Parties shall be otherwise closed, the Court shall appoint a Day in the hearing of the Parties their Council, Solicitors or Agent to examine and consider the same, at which Day they shall proceed to settle the Issue or Issues contained in the several Allegations and Pleadings of the parties.

And if upon such Consideration and review of the pleadings it shall appear to the Court, and the Parties shall agree that no fact material to the point or points in Issue is controverted between them but that the Right of either party depends upon a mere Question or Questions of Law the Court shall appoint a day for hearing the Arguments of Council on both sides touching the same, and shall determine therein according to the Laws and Customs of the Province and according to their best knowledge and understanding of the same.

And if upon such review & Consideration as aforesaid it shall appear to the Court that some Fact or Facts material to the point or Points in Issue is and are intended to be contested between the Parties it shall and may be Lawfull for the Court by consent of all Parties and not otherwise to try the same before themselves by Vivâ Voce Evidence of Witnesses at their Bar written Instruments or other modes of Testimony commonly used in Courts of Justice and instead thereof and in case any of the Parties shall so require to direct one or more Issue or Issues for the Proof of such Facts to be Tried by a Jury return-

able by the Sheriff at such day and time as the Court shall appoint for the Trial of the same.

And if upon review of the Pleadings aforesaid it shall appear to the Court that the Right of either Party depends upon a complicated Question both of Law & fact it shall and may be lawfull for the Court in that Case upon the consent of all the Parties as aforesaid to try such Issue of Fact themselves upon such Evidence as aforesaid or otherwise at the instance and request of either of the Parties to direct one or more Issue or Issues for the tryal of such Fact or Facts by Jury reserving to themselves the sole Right of determining (in which the Jury shall not interpose) the Question or Questions of Law Dependant upon such Facts and to give Judgment and pronounce thereon according to the Laws and Customs of the Province and according to their best knowledge and understanding of the same.

And it is further enacted and ordained that in all Actions hereafter to be commenced in either of the Courts of Common Pleas of the Nature of Actions of Assault and Battery, Slander false imprisonment and other Actions wherein a Recompence in Damages is sought for Personal wrongs, where no Justification in Law is pleaded on the part of the Defendant but the Issue is a meer Question of Fact upon Guilty or not Guilty it shall and may be Lawfull to and for the Judges of such Court to direct the same to be tried by a Jury of twelve Men who shall give their Verdict and assess the Damages between the Parties in the same manner as Juries do or have right to do who are at any time returned to try such Issues in the Court of Common Pleas at Westminster or any other Court of Civil Jurisdiction within the Kingdom of England.

And where in such Action or Actions as aforesaid any Justification in Law is set up by the Defendant or any Question of Law goes to the whole merits of the Case shall arise out of the pleadings the Court shall give Judgment thereon before any Issue shall be directed for the Trial of any Fact, and if such Judgment shall be with the Plaintiff it shall and may be Lawfull for the Court to direct and award to the Sheriff of the District in which such Judgment shall have been given a writ to Summon a Jury of twelve Men to appear before the Court on a certain Day therein appointed to enquire concerning the Damages sustained and suffered by the Plantiff in the said Action and Assess the sum necessary to be given to him as a Compensation for the same.

And whereas it has been found by Experience that the unanimity heretofore required from Jurors in giving their Verdict has been attended with many inconveniencies, it is further

I think it will be necessary to have a particular Ordnance for the Regulation of Juries —if so this Clause had better be omitted for the present, indeed I am much inclined to doubt the Principles or Propriety of it at any Time.

Enacted and ordained that in all Issues directed to be tried by a Jury in the Court of Common Pleas it shall not be necessary for the whole twelve Jurors to agree in their Verdict but the Verdict of Eight out of the twelve and not fewer agreeing and consenting thereto shall be as good valid and effectual for ascertaining any Fact or Facts directed to be tried in such Issue or Issues or for assessing such Damages as if the whole twelve Jurors had agreed and been consenting to the same.

And whereas the Governor and Commander in Chief of the Province for the time being has been used to hear and determine causes in Equity and to pronounce order and decree therein between the Parties in a Court called and known by the Name stile and title of the Court of Chancery held before himself as keeper of the public Seal of the Province the proceedings of which Court with the Delay and Expence incident to a Suit commenced therein have been very Burthensome to the parties and are ill adapted to the state and Condition of the Province— It is further Enacted and ordained by the Authority aforesaid that from and after the Publication of this Ordinance No Governor, Lieu$^{t}$ Governor or other keeper of the Public Seal of the Province shall hold or keep or sit as Judge in any such Court of Equity or Exercise any Powers & Authorities touching the same as belonging to or derived from the Custody of the Public Seal, but the same are hereby and by the Authority aforesaid revoked, annulled, and made void to all Intents & Purposes whatsoever.

And in place thereof and in order to retain & preserve so much of the Jurisdiction of a Court of Equity as is adequate to the purpose of attaining specific Justice & necessary thereto, it is farther enacted & ordained that in Matters of Account, Trust, Fraud, Concealment, and other Cases where any Plaintiff or Plaintiffs, or any Defendant or Defendants shall seek a Discovery of any Deed, Trust or other Matter or thing within the Knowledge of any Defendant or Defendants, Plaintiff or Plaintiffs which in all Equity and good Conscience ought to be discovered & made known to the Parties seeking such Discovery it shall and may be lawful to and for the Judges of the Court of Common Pleas as well in Quebec as Montreal to permit such Plaintiff or Plaintiffs & such Defendant or Defendants upon his, her or their Prayer for that purpose to exhibit one or more Interrogatory or Interrogatories for the purpose of procuring such Discovery and to compel the Parties from whom such Discovery is sought to answer the same upon pain of being proceeded against in the same manner as persons in Contempt for not answering or making such Discovery are usually proceeded against in any of the

Courts of Equity in England until full Answer is put in or the Court is otherwise satisfied and the Party cleared of the Contempt.

And in like manner in all Cases of Covenant, where from the time of entering into such Covenant, nothing has intervened, or happened, to make it hard or unreasonable for the Party covenanting to perform the same, in the express Terms of the Covenant, it shall, and may be lawful, to and for the Judges of the said Courts of Common Pleas, upon Prayer of the Party for that purpose, to award and decree a specific performance of such Covenant, or Covenants, and in case of Disobedience, or Refusal, to imprison the Party so refusing, 'till he, she or they shall comply with the same & pay due Obedience to such Award & Decree.

And it is further enacted & ordained by the Authority aforesaid, that as well in the Courts of Common Pleas aforesaid, as in all other Courts of Civil Jurisdiction in this Province, the Process for compelling Appearances & all other Matters previous to the Judgment except in Cases of Contempt for not answering to Interrogatories, & except where the Judges of the Court upon special Affidavit shall mark any Writ for Bail which in their Discretion they are hereby authorized to do, shall by Summons, Attachment of Goods & Distress only, & after Judgment, by Writ of Execution against the Goods & Effects, and for want of Goods & Effects, against the Land, and for the want of Land against the Person of the Defendant or Defendants, against whom any Judgment or Judgments shall be obtained in any such Court or Courts.

But whereas great & manifold Inconveniences & Losses have arisen to the Proprietors of real Estates in this Province by having their Houses & Lands taken in execution & exposed to sale for the payment of small debts, & also from the hasty & informal Method of setting the same to sale, even in Cases where the Extent of the Judgement will admit of no other Satisfaction; It is further enacted & ordained by the Authority aforesaid that from & after the publication of this Ordinance no process whatsoever shall be awarded out of any of the Courts of Civil Jurisdiction in this Province, for the Sale of any House or Houses, Land or Lands ,Tenement or Tenements upon any Judgement or Judgements where the original Cause of Action shall not exceed the sum of ten pounds Sterling Money of Great Britain, & that from & after the publication aforesaid, no Houses, Lands or Tenements nor any House, Land or Tenement shall be extended or sold by the sheriff or any person whatsoever, unless the per-

sonal Property of the Defendant or Defendants in the Action shall be found insufficient.

And it is further ordained and declared by the Authority aforesaid, that upon the issuing of any Writ or Writs of Execution for the sale of any Houses, Lands or Tenements, or so soon after as conveniently may be, the Sheriff of the District in which such Houses, Lands or Tenements shall lie or be situated shal cause the same to be advertized in the Quebec Gazette, both in English and French, and therein set forth as near as may be the Quantity, Quality & Condition of such Lands & Houses, together with the Terms & Day of sale, which Day of Sale shall not be 'till six Months after such Publication as aforesaid; and at the same time or so soon after as conveniently may be, he shall also cause a true Copy of the said Advertisement in the English and French Language to be sent to the Head Bailiff of the Parish where such Houses & Lands shall lie & be, who is hereby ordered & required to fix the same upon the Door of such Parish Church, & replace the same so often as it shall be removed, defaced, or rendered illegible by time or accident; and also to publish & declare the Contents thereof every sunday at the Door of the said Church immediately after Divine service, that the same may be fully known & understood by the Inhabtants thereof for which the said Bailiff shall receive out of the Produce arising from the Sale of the said Estate the Sum of one Spanish Dollar & no more to be paid by the sheriff & allowed him in his Accounts.

Provided always, and it is hereby and by the Authority aforesaid further ordained and declared, that from and after the Publication of this Ordinance, all Houses Lands & Tenements against which any Writ or Writs of Execution shall be awarded for the sale of the same, shall be taken to be and they are hereby & by the Authority aforesaid declared, to be obliged & bound in Law to pay & satisfy all & every judgment & Judgements which shall or may be obtained against the Owners & Proprietors thereof, from the Day on which such Judgement or Judgements shall be pronounced & given, and that no Mortgage Sale or Assignment, or any Deed of Conveyance or any Disposition without Deed, whatsoever, howsoever, or to whomsoever made on or after the Day on which such Judgement or Judgements shall be pronounced & given as aforesaid shall defeat, avoid, suspend, or delay the Force and Operation of such Judgment, but all & every such Morgage, Sale, Assignment, Deed & Disposition, shall be taken to be, and all & every of them is, & are hereby declared to be fraudulent, as against the said Judgment, Creditor, or Creditors, & to have no Validity, Power, Effect, or operation,

whatsoever to the prejudice of such Judgment Creditor or Creditors.

And it is further ordained & declared by the Authority aforesaid, that all Judges issuing any Writ of Execution, as well where the Cause of Action shall exceed the sum of ten Pounds sterling as aforesaid, or where it shall not exceed the same, shall & may, and they are hereby authorized & required, to mark upon such Writ of Execution, the Day on which Judgement was pronounced in the Cause, and if two or more Writs of Execution shall be issued upon Judgments pronounced, the same day, against the same Defendant, or Defendants, & so marked upon the Writ, such Executions shall have the same Privileges, & be satisfied in equal proportions; & the sheriff or other persons to whom such Writs of Execution shall be awarded, is hereby authorized & commanded, after the sale of the whole of such Defendant or Defendants, real & personal Estate, where the said Writs of Execution shall be awarded against both, in case the same should not be sufficient to satisfy the whole of the said Judgements, to pay over, & divide the Produce of such sale, or sales, after deducting his own Costs & Charges, amongst the several Plaintiffs in proportion to the Amount of their respective Judgments.

*This Clause perhaps had better be inserted after the clause establishing the Courts of the District.

*Provided always that nothing contained in this Ordinance shall extend or be construed to extend, to prevent or hinder the Judges of any of the Courts of Judicature, established or to be established by virtue of the same, from making any other Rules & Regulations, not contrary to the Rules & Regulations herein before described, for the more orderly practice & Proceedings in the said Courts, but the said Judges of the said several Courts shall be, and they are hereby authorized & impowered to make such other Rules & Regulations, except in the Cases herein before provided for, in as full & ample manner, as all, or any of the Judges of the several Courts of Judicature in England may or of Right ought to make.

And provided also that, in all Cases where the Cause of Action shall exceed the sum of ten pounds sterling Money of Great Britain, or where any Title to Land is in question, all & every Person & Persons, who shall think him, her, or themselves, aggrieved by Virtue of any Decree, Judgment, sentence, or Order, of any of the Courts of Justice established; or to be established, in this Province, may appeal therefrom; & it shall be lawful for him, or them, to appeal therefrom to the Court of Appeals, to be held before the Gov$^{r}$ & Council of the Province as hereinafter appointed; such Person or Persons so appealing, having first given good security to prosecute such Appeal, &

also to pay & satisfy the Debt & Costs, as well of the original Judgement, as of the Appeal, in case the original Judgement shall be affirmed in such Court of Appeal.

Provided always that such Appeal be prosecuted out of the Court below, & entered with the Clerk of the Council or other Officer appointed to receive Appeals from the inferior Courts within Months after Judgment shall have been given in such inferior Courts.

And whereas the providing an easy plain & summary Method of proceeding for the Recovery of small Debts, very much contributes to promote Industry & to support & encourage useful Credit, and to the intent that the manner of Proceeding in such Actions where the Matter in dispute does not exceed the sum of ten Pounds sterling Money of Great Britain may be clearly comprehended so as to enable the Party to prosecute his own Means of Redress by himself or Agent with Dispatch certainty & Moderation in point of Expence; It is enacted & declared &c[a] That from & after the Publication of this Ordinance in all Matters where the Cause of Action shall not exceed the Sum of ten Pounds as aforesaid. No Process whatsoever shall issue against any Defendant or Defendants untill the Plaintiff or Plaintiffs or his, her or their Agent or Agents shall have produced & left with, or being unable to write or read, shall have first procured from the Clerk of the Court of Common Pleas in which such Action is intended to be brought who is hereby ordered & required to make out the same a Plaint or Declaration either in the English or French Language according to the following form.

*Quebec*
Montreal Day of 177
A. B. Plaintiff
C. D. Defendant

The Plaintiff demands of the Defendant the sum of due to the Plaintiff from the Defendant for which said sum though often demanded, still remains due, Therefore the Plaintiff demands Judgement; which Declaration being so produced to, and left with or so as aforesaid made out by the Clerk of the Court in which such Action is intended to be brought, shall be filed by the said Clerk with other Records of the Court, and the said Clerk shall immediately make out an attested Copy thereof & upon such Copy indorse a summons to which he shall procure the Name of one of the Judges of the said Court to be set commanding the Defendant either to pay the Debt & Costs to the Plaintiff, or else to appear on some subsequent Court day, according to the Discretion of the Judge who signs the

same, Regard being had to the distance of the Defendant's place of Residence, & the means of Communication therewith, which summons shall be in the following form.

To C. D. the Defendant in this Action.

You are hereby commanded & required to pay to the Plaintiff the within named Sum of together with Costs or else to be and appear, either in person, or by your Agent, before me at the Court house of the Town of $\frac{\text{Quebec}}{\text{Montreal}}$ together with your Witnesses, if any you have, on day of which day the matter of Complaint against you, as Contained in the within Declaration, will be heard & finally determined, otherwise Judgment will be given against you by default in this Action.

E. F. Judge of the Court of Common Pleas.

And this attested Copy of the Declaration and Summons, indorsed & signed as aforesaid, for all which the Clerk of the Court shall receive from the Plaintiff the Sum of Six Pence & no more, where the Original Declaration shall be produced & delivered to him, and the Sum of One Shilling & no more where he shall make out the same himself at the desire of the Party shall be delivered to the Plaintiff or Plaintiffs, or his, her or their, Agent or Agents, who shall convey, or cause the same to be conveyed, to one of the Bailifs of the Parish in which such Defendant resides, who is hereby authorized and required to serve the same upon the Defendant, personally if he can be found, or otherwise upon his Wife, Son, Daughter, Servant, or other grown person at his the said Defendant's Dwelling House or usual Place of Abode, & at the same time to shew him, her, or them, the attested Copy of the Declaration, with the Writ of Summons annexed, & to acquaint him, her or them, with the Contents thereof, & to leave a Copy of the same at the said House, & the Bailif serving such Process as aforesaid is hereby further authorized & required to attest the said Service at the foot of the said Writ of Summons, together with the day and time of serving the same, according to the following form.

I, G. H. Bailif of the Parish of did on day of personally serve the within named Defendant with the Copy of the Declaration & Writ Summons annexed, by shewing him the same & acquainting him with the Contents thereof, or by leaving a Copy of the same, & acquainting him with the Contents thereof, or by leaving a Copy of the same at his house with the of the said Defendant, such being of the Age of or thereabouts.

And this Copy of the Declaration, Writ of Summons, & Certificate of the Service so made by the Bailif shall be delivered

by him to the Plaintiff if thereto personally required by the Plaintiff himself who shall pay the Bailif for the service & Attestation aforesaid, the Sum of one Shilling & no more, which Sum of one Shilling, together with the Charges of issuing and returning such Process shall be allowed him in his Costs in Case he shall obtain Judgement against the said Defendant in the Action but in case the said Plaintiff shall not personally demand the Custody of the said Process after such Service and Attestation as aforesaid then the Bailiff so serving and attesting the same shall forthwith return the same to the Court of Common Pleas from whence such Process issued who shall direct the Costs of returning the same together with the Fee of one Shilling for the Service and Attestation thereof to be paid to the said Bailiff, by the Defendant if he shall be condemned in the Action or by the Plaintiff if he shall discontinue or otherwise fail in the proof of the Matter contained in his Declaration.

And it is further ordained and declared by the Authority aforesaid that if any Defendant after having been duly summoned as aforesaid shall refuse to pay the said debt and shall not appear either by himself or Agent before the Court at the time and Place mentioned in the said Writ of Summons it shall and may be lawful for the Judge or Judges of the said Court upon View of the Certificate of the said Bailiff or other due proof of the Service of the said Writ of Summons in manner aforesaid to hear the Cause on the part of the Plaintiff only and to make such Order Decree or Judgement and to award such reasonable Costs of Suit as to him or them shall seem most agreeable to Equity and good Conscience and if upon the day of the Return of such Writ, or on such other day as shall be appointed by the Court for the hearing of the Cause the Defendant so summoned as aforesaid shall appear either by himself or his Agent, and the Plaintiff shall not appear either by himself or his Agent, or appearing shall not prosecute or prosecuting shall fail in the proof of the Matter contained in his declaration that then upon due proof that such Defendant was served with such process it shall and may be lawful to and for the Judge or Judges of the said Court to dismiss the said Defendant and decree and award him such Costs as in his or their discretion shall seem meet and also to award Execution against the said Plaintiff for Recovery and levying thereof in the same manner as other Executions are hereby directed to be awarded against the Defendant where the Plaintiff shall obtain Judgement in the Action.

Provided always and it is hereby further ordained and declared by the Authority aforesaid that no Execution shall be awarded against any Defendant until the next Court day after

that on which Judgement shall have been given in the Action to the intent that the Party may have time to satisfy such Judgement by paying the Debt and Costs into the hands of the Plaintiff or Plaintiffs, his her or their Agent or Agents or to the Clerk of the Court who is hereby authorized and required to receive the same for such Plaintiff or Plaintiffs for his her or their use unless it shall be made to appear to the Court pronouncing such Judgement that the Defendant or Defendants is or are preparing to leave the District or otherwise to defeat the Plaintiff or Plaintiffs of the Effect of his her or their Judgement in which Case it shall and may be lawful for the Court pronouncing such Judgement to award Execution immediately but in default of such Payment as aforesaid it shall and may be lawful for the Court pronouncing such Judgement on the Friday next ensuing the said Judgement to award Execution under their Hand and Seal directed to the Head Bailiff of the parish in which the Defendant resides or to some other discreet Person dwelling in or near the said Parish whom the Court shall nominate for that purpose and which they are hereby authorized to do commanding him to levy the debt and Costs together with his fees for levying the same and returning the said Writ (which &c[a] shall be expressed in the Warrant of Execution) out of the Goods and Chattels belonging to such Defendant only with an express Reservation therein contained of his the Defendant's Beasts of the Plough, Implements of Husbandry Tools of his Trade and one Bed and Bedding unless the other Goods and Chattels of such Defendant shall prove insufficient in which Case such Beasts of the Plough Implements of Husbandry and Tools of his Trade shall be sold but not the Bed and Bedding. And the said Bailiff or other Person to whom such Writ of Execution shall be awarded shall before he proceeds to do any thing therein give Notice at the Church door of the Parish wherein such Writ is intended to be executed immediately after divine Service both Morning and Evening on two successive Sundays next after the coming of the said Writ of the day and time appointed for the Sale of the Defendant's Goods on which day he shall proceed to sell the same to the highest Bidder and for the most Money he can get untill he shall have raised sufficient to discharge the whole of the said Writ of Execution after which if any Goods or Effects remain in Execution the same shall be immediately restored to the Defendant.

Provided also and it is hereby further Ordained Enacted and Declared that it shall and may be lawful for any Judge or Judges issuing or awarding any Writ of Execution in Matters where the Cause of Action shall not exceed the Sum of Ten

pounds sterling Money of Great Britain upon due proof before him or them made of the distressed Circumstances of any Defendant or Defendants in any Action to indorse upon the same his or their Order to the Bailif or other Person as aforesaid commanding him to levy and raise the Sum for which the Writ is awarded by Installments in such proportions and at such days and times as to him or them shall seem meet.

Provided nevertheless that the whole of the Time so allowed and given shall not exceed the space of three Months from the day of the date of awarding such Writ of Execution.

And if it shall appear upon due proof thereof made before the Judge or Judges issuing and awarding such Execution as aforesaid that the Defendant or Defendants hath or have at any time after the Service of any Declaration and Writ of Summons as aforesaid conveyed away or secreted all or any part of his or their Goods or Effects in order to defeat the Plaintiff or Plaintiffs of his or their demand then and in such Case it shall and may be lawful to and for the said Judge or Judges to award a Writ of Execution immediately against the Body and Bodies of such Defendant and Defendants directed to the Bailiff or other Person as aforesaid commanding him to arrest the said Defendant or Defendants and him or them to convey to the Common Gaol of the District there to remain till such Debt and Costs be fully satisfied or other Order be made by the said Court for his or their deliverance.

And it is further Enacted and Ordained that no Appeal whatsoever shall lie from any of the Courts of Justice in this Province for any Matter or Thing where the Cause of Action shall not exceed the Sum of Ten pounds sterling Money of Great Britain and where no Title to Land is in Question but the Sentence of every such Court in all Matters where the Cause of Action shall not exceed the Sum of Ten pounds and where no Title to Land is in Question as aforesaid shall be final and conclusive without any Appeal Revision or further Contestation before any other Court whatsoever.

And whereas many Parts and Places of the Province now in and advanced State of Cultivation and Settlement particularly the Forts of Michilimacinac and Detroit and the Settlements at Gaspée in the Bay of Chaleurs on the Coast of Labrador in some of which large Fisheries are established and in others a very extensive and profitable Trade is carried on are so great a distance from the Court of Common Pleas herein before established as to be in a Manner almost wholly deprived of the Protection Benefits and Advantages of their Jurisdiction and Authority.

And it being of the utmost Importance to the public Peace Order and good Government of the People the Security of their Property and the Maintenance of their just Rights and dues that Courts of Criminal and Civil Jurisdiction should be established in such Places.

It is further Enacted and Ordained That in and over a District or Territory to be taken out of the District of Quebec as herein before described comprehending the whole Township or Settlement of & a Circumference of Miles round the same it shall and may be lawful to and for His Majesty His Heirs & Successors from time to time to appoint one Sheriff to have a concurrent Jurisdiction with the Sheriff of Quebec to preside.

And it is enacted & ordained that for the due execution of the Laws & Administration of Justice within such Township, Settlement, & District thereunto annexed as aforesaid, there shall be established, & the same is hereby, & by the Authority aforesaid established, constituted and appointed one Court of Criminal and Civil Jurisdiction by the Name Style & Title of the Court of Kings Bench for the Township of and the District thereof, to hear & determine in all Matters of a Criminal nature according to the Laws of that part of Great Britain called England, & the Laws, Orders & Regulations of the Province hereafter in that behalf to be made, and in all Civil Matters according to the Laws & Customs of Canada, as observed & used in the said Province before the Conquest thereof by His Majesty's Arms, & according to such Laws Ordinances & Regulations as shall from time to time be enacted by the Legislative Council of the same. Which Court, so constituted & appointed as aforesaid, shall be held before one Judge to be appointed by Commission under the public Seal of the Province by the Name Style & Title of Judge of the Court of King's Bench for the Township & District of and one other Person by the Name of Assistant or Assessor to the Judge & Court of the Township and District of which Assessor shall be present at every Court to sit with the Judge, & assist him with his Advice & Opinion in all Civil Matters as well of Law as Practise, but shall have no Authority or power to attest or issue any Process, or have any Voice, or give any Vote concerning any Order, Judgement, or Decree, or otherwise intermeddle with any of the Business of the said Court, than by giving such Advice & Opinion as aforesaid, which Judge so as aforesaid appointed, is hereby fully empowered & authorized to hear and determine all matters of a Criminal Nature, done, committed, or perpetrated within the Township & District as

aforesaid; & the Offenders therein with their Accessories & Accomplices to imprison, try, convict, & punish, in as large and ample a manner, & according to the same rules & forms of proceeding within the Jurisdiction aforesaid as the Chief Justice of the Province may & of right ought to hear & determine, imprison, try, convict & punish in the Province at large in all Cases whatsoever; & also to have cognisance of Pleas, as well between His Majesty & His Subjects as between Party & Party whether Real, Personal or mixed, and the same to hear, adjudge & finally determine and also to award Costs between Party & Party, and otherwise to proceed according to the same forms, as well where the cause of Action shall exceed, as where it shall not exceed the Sum of Ten Pounds Sterling Money of Great Britain, in as full and ample a manner as any Judge or Judges of the Courts of Common Pleas at Quebec & Montreal hath, or of right ought to have the same, to hear, adjudge, determine & award.

Provided always, & it is hereby further enacted & ordained by the Authority aforesaid, that in all Cases of Treason, Murder, or other capital Felonys, it shall not be lawful to or for the Judge of such Township or District, nor shall he have any Power or Authority to try the same, but the said Judge is hereby commanded & required to send all Offenders therein, togehter with their Accomplices & Accessories, so soon as they shall be found, by Warrant under the Hand & Seal of such Judge, expressing the Crime for which such Offenders stand committed, to the Sheriff of Quebec who is hereby Authorized & required to receive such Offender or Offenders and him, her, or them to convey to the Jail of Quebec, there to remain till they be delivered by due Course of Law.

And such Judge of the Township and District of as aforesaid shall bind over the Prosecutor of such Offender and Offenders together with the witnesses to Prosecute and give Evidence in the Court of Kings Bench to be held for the Province at large before the Chief Justice himself next after the Reception of such Offender or Offenders in the Goal of Quebec or at such day as the chief Justice shall appoint for the trial of the same. And such Judge of the Court of King's Bench for the Township and District of shall hold a Court of Oyer Terminer and Goal delivery at in and for the district of at least four times in every Year that is to say one Court at or on some day in the Month of one other Court at or on some day in the Month of one other Court at or on some day in the Month of and one other Court at or on some day in the Month of and as much oftener as the Judge of

such Court in his discretion shall think necessary and the State of the goal may require allowing allways fifteen days between the Teste and Return of the Precept for holding such Courts.

The same Courts with the same Powers to Missilimaconac, Detroit, Gaspée & the Illinois and such other places as shall be necessary At which days and times the Court shall sit and continue to sit till every Prisoner in the Goal shall be truely convicted or acquitted and discharged and the goal fully delivered unless the Court shall see cause to the contrary in which Case it shall be Lawfull for them to remand any Prisoner or Prisoners and put off His, Her or their Trial to the next Court.

And whereas it is expedient and Necessary that a Court of Civil Jurisdiction should be established for the hearing and determining appeals from the several Courts of Civil Judicature throughout the Province.

Be it enacted and it is accordingly enacted that from and after the Publication of this Ordinance the Governor & Commander in Chief of this Province for the Time being the Lieutenant Governor & in their absence the president of the Council which shall be the Chief Justice of the Province for the time being together with every other member of His Majestys Council shall be and they are hereby and by the Authority aforesaid constituted and appointed a Court of Civil Jurisdiction for the purpose of hearing and determining all appeals in Cause where the Matter in Dispute shall exceed the sum of Ten pounds or where any title to Land is in Question as aforesaid from any of the Courts of Civil Jurisdiction established in the Province.

And that all unnecessary delay may be avoided and speedy Justice done to the Parties in all such appeals it shall and may be lawfull and the Court of Appeals so establish'd is authorized and required to sit and hold a Session.....times in every Year; That is to say One Session at or on some day in the Month of.....And in all Cases of Appeals from any of the Courts of Civil Jurisdiction in this Province the Governor and Lieutenant Governor and in their Absence the Chief Justice of the Province as President of the Council together with other Members of the Council shall be and constitute a Court for the hearing & determining the same and their proceedings shall be as effectual and their determinations as final and conclusive as if every Member of His Majestys Council was present and gave his Vote in the same And when it shall happen at any time that the Court is divided in Opinion and there shall be the same Number of Voices for reversing as there shall be for confirming the Judgment of the Court below in such case the Governor Lieuten[t] Governor, or other President of the Court over and

above his Vote already given by Virtue of which such Equality has been formed shall have one other Vote or Casting Voice by which the Event of the Appeal shall finally be determined.

And It is further Enacted and ordained by the Authority aforesaid that as well the Original Writ for removing the Record out of the Court below as all other process shall be and issue in the Name of the King Tested by the Governor Lieutenant Governor or President of the Court only and by no other and such Original Writ may issue at any time upon Application of the Party and bear date as well out of Session as in returnable if out of session on the first or some other day of the next Session and if in Session on some day in the same or the first day of the next Session as the Governor Lieutenant Governor or President of the Court shall think proper. And that the Court may proceed to try the real Merits of every Appeal and not be confined solely to the Examination of Errors upon the face of the Record it shall be lawful for, and by the Authority aforesaid Power is hereby given to the said Court of Appeals to issue process to bring up not only the Original Record but all Papers and written Evidence of every kind produced by eihter party in the Court below and the Judges of the Court below shall also send up a List of the Witnesses who have been Examined in the Cause vivâ voce in order that the Court may reexamine them if they think proper and finally determine upon the true Merits of the Case.

And if the Court shall be of Opinion that the Judges of the Court from whence the Appeal is prosecuted have mistaken either the Law or the fact and have given Judgment for the Defendant in Error when in Truth it ought to have been given for the Plaintiff, in such Case it shall be lawfull for the Court, and they are hereby Authorized and impowered not only to reverse such Judgment of the Court below, but also to give such other Judgment and award such Costs as upon the whole face of the Proceedings and Examination of the Witnesses it shall appear to them ought to have been given and awarded by the Court below.

And it is further Enacted and Ordained that Judgment in this Court upon every Appeal where the Matter in dispute shall not exceed the Sum of five hundred pounds Sterling Money of Great Britain shall be final and conclusive to all Parties without further Examination Revision or Appeal whatsoever (reserving to the Parties an Appeal to His Majesty himself in Council in all Cases where the Matter in dispute shall exceed the Sum of five hundred pounds as aforesaid) and Execution shall issue thereupon to enforce the same out of this Court

without remanding the Record upon any Occasion or sending it back to the Court below even in Cases where the Judgment of the Court below shall be confirmed.

And whereas Doubts may arise whether the Revival & Restoration of the Canadian Laws with Respect to real Property may not have restored the Seigneurial and other Courts established for the Regulation and Government of that Property as incident thereto.

It is further Enacted and Ordained that from the Publication of this Ordinance No Seigneur or Lord of any Seigneurie or fief shall either by himself or any Judge appointed by him hold any Court within or for any fief or Seigneurie whatsoever belonging to him or exercise either by himself or any other Person any Judicial Power or Authority whatosever within his Seigneurie but all such Powers And Authorities are hereby declared void any Grant Usage or Custom heretofore prevailing to the Contrary hereof in any wise Notwithstanding.

*Endorsed:*

Dra[t] of Ordinance for establishing Courts of Justice in the Province of Quebec.

## CARLETON TO GAGE.[1]

(Secret) (Copy) QUEBEC 4[th] Feby. 1775.

SIR

As this goes by Lt. Cleveland of the 7[th], I will venture to be more explicit about what you mention of the Canadians and Indians in your Letter[2] of the 25[th] Dec[r] last, than I thought it prudent to do by Post, as one may naturally suppose, those, who seem resolved to force their Country into Rebellion, Jealous of the Correspondence, may intercept our Letters, to make themselves Masters of the Correspondence, and should those Disorders continue, as there is too much Reason to apprehend, I submit it to your Consideration, whether it may not be proper to send me a Cypher, for the greater Security of our Correspondence on Matters of a secret nature.

The Canadians in General have been made very happy by the Act passed in their Favor, all that have spoke, or wrote to me upon the subject, express the most grateful Sense of what has been done for them ; I must not however conceal from Your Excellency, that the Gentry, well disposed, and heartily desirous as they are, to serve the Crown, and to serve it with

[1] Canadian Archives, Q 11, p. 290. Gen. Gage had arrived in Boston on May 13th, 1774, in the double capacity of Governor of Massachusetts and Commander in Chief of the British forces in North America. Upon him, therefore, rested the duty of carrying out the repressive measures enacted by the Home Government, such as the "Port Act," the "Regulating Act," the "Quartering Act," &c. The troubles which culminated in a rising of the people in Sept. induced Gage to call for more troops. He therefore, as we have seen (p. 582), not only summoned two regiments from Quebec, but enquired as to Carleton's ability to send him a body of Canadians and Indians to assist in suppressing the colonists.

[2] This letter has not yet been found among the State Papers.

Zeal, when formed into regular Corps, do not relish commanding a bare Militia, they never were used to that Service under the French Government, (and perhaps for good Reasons) besides the sudden Dismission of the Canadian Regiment raised in 1764, without Gratuity or Recompence to Officers, who engaged in our Service almost immediately after the Cession of the Country, or taking any Notice of them since, tho' they all expected half pay, is still uppermost in their Thoughts, and not likely to encourage their engaging a second Time in the same Way ; As to the Habitants or Peasantry, ever since the Civil Authority has been introduced into the Province, the Government of it has hung so loose, and retained so little Power, they have in a Manner emancipated themselves, and it will require Time, and discreet Management likewise, to recall them to their ancient Habits of Obedience and Discipline ; considering all the new Ideas they have been acquiring for these ten years past, can it be thought they will be pleased at being suddenly, and without Preparation embodied into a Militia, and marched from their Families, Lands, and Habitations to remote Provinces, and all the Horrors of War, which they have already experienced ; It would give an appearance of Truth to the Language of our Sons of Sedition, at this very Moment busily employed instilling into their Minds, that the Act was passed merely to serve the present Purposes of Government, and in the full Intention of ruling over them with all the Despotism of their ancient Masters.—

It may be further observed, that the Act is no more than the Foundation of future Establishments ; that the new Commissions and Instructions, expected out, are not yet arrived, and that the Dissolution of the present Constitution, if it deserves the Name, and Establishment of the new one, are still at some Distance ; at that Period, upon the first of May, every Civil Regulation, at present existing, is annihilated, and the whole to be cast into a new Form, a Work that must necessarily be attended with some Difficulty, and will require Time, Consideration, and great Prudence, for which it is not in our Power to prepare, untill the final Determination of the Ministry upon all these Matters is known;[1] had the present Settlement taken Place, when first recommended, it would not have aroused the Jealousy of the other Colonies, and had the appearance of more disinterested

[1] The Quebec Act was to come into force on May 1st, 1775. As indicated above, there was not time before that date, to prepare the necessary legal machinery of courts, etc., for the radical reversion from the English to the French system of law. Accordingly, on the 26th April, 1775, Carleton issued a proclamation stating that under existing conditions, and with the authority of his commission as Governor, "I have constituted and appointed Adam Mabane, Thomas Dunn, John Fraser and John Marteilhe, Esquires, as His Majesty's Justices of the Courts of Common Pleas for the Districts of Quebec and Montreal in this Province; and Hertel Rouville of Montreal, and John Claude Panet of Quebec, Esquires, or any two or more of them, to be from and after the said first Day in May next ensuing, during Pleasure, or until proper Courts of Judicature can be established in the said Districts, Conservators of the Peace throughout the same, with all necessary Powers and Authorities for that and other the purposes aforesaid, to be done and executed According to Law; and further, from and during all the time aforesaid, to the Commissioners for suing Civil Process, and causing the same to be executed in the said Districts, in such Manner as the Law directs and by their Commission is appointed." By the same commission he also continued in office the former bailiffs of the Districts of Quebec and Montreal. The proclamation was published in the *Quebec Gazette* of April 27th, 1775.

Favor to the Canadians; many Advantages might have resulted therefrom at this Juncture, which must now be deferred to a more distant occasion—

Since it could not be done before, this would prove a fair opportunity for raising a Battalion or two of Canadians; such a measure might be of singular Use, in finding Employment for, and consequently firmly attaching, the Gentry, to our Interests, in restoring them to a significance, they have nearly lost, and through their Means obtaining a further Influence upon the Lower Class of People, a material Service to the State, besides that of effectually securing many Nations of Savages—

As to the Indians, Government having thought it expedient to let Matters go in that channel, I have ever considered the late Sir W^m^ Johnson,[1] to whom, I suppose, Colonel Guy Johnson succeeds, as having their Political Concerns under his immediate Direction, with which I never interfered further, than their Commercial Interests, or the private Property, they possess in the Country, required, and upon this Principle Major Campbell's Commission was granted ; however, if I am not greatly deceived in my Intelligence, not only the Domiciliés of the Province, but all the neighbouring Indians are very much at your Disposal, whenever you are pleased to call upon them, and what you recommend shall be complied with—

Left to my own Speculations in this retired Corner, without Intelligence of what passes in Europe till very long after the Event, and from a knowledge of the present Continental Transactions only, I entertain no Doubt, our Army is by this Time augmenting, and that as soon as the Navigation opens, some Troops from Britain will be sent up this River, and in my Opinion, it should not be an inconsiderable Force ; if we are to have a French War, this Corps will become indispensably necessary here, if not, it might effectually second your Intentions, prevent much Effusion of Blood and Treasure, and procure the speedy Decision of a Contest, rendered more dangerous by every Moment's Delay ; the Strong easily find Friends, and no Doubt they might readily procure a Multitude of excellent Guides, who would lead the Way on any Service you should think right to direct——&ca

(Signed)

GUY CARLETON

(a true Copy)

H. T. CRAMAHÉ

His Excy General Gage

Endorsed :—Copy of a Letter from Genl. Carleton to Genl. Gage, dated Quebec 4^th^ Febry 1775.

In Lieut. Governor Cramahé's Letter of the 9^th^ Nov^r

[1] Sir Wm. Johnson, having early settled on the Mohawk river above Albany, and having acquired, through trade and the French wars, an unusual influence over the Iroquois Indians, had been appointed Superintendant of Indian Affairs for the Northern Division. He died on July 11th, 1774. Col. Guy Johnson, his nephew and son-in-law, who had also served in the war for the conquest of Canada, had been appointed Sir Wm. Johnson's deputy in 1762 and named as his successor. On Sir William's death he continued for a time as Indian Agent; but his conduct of the office was not very satisfactory and later he was superseded by his cousin Sir John Johnson, son of Sir William. In 1775 the position of Superintendant of Indian Affairs was conferred upon Major John Campbell.

SESSIONAL PAPER No. 18

## DARTMOUTH TO CARLETON.[1]

WHITEHALL 7th June 1775.

Governor Carleton

Sir,

I have recd your Dispatch of the 13th of March,[2] N° 9, and have laid it before the King.

The Enemies of the Constitution appear to be unwearied in their Endeavours to convey every Misrepresentation that may have the Effect to weaken the Hands of Govt, and to encourage Faction & Discontent. It is hoped, however, that the Firmness of the present Parliament, in Support of the Measures which the last Parliament thought fit to adopt for America in general, and for regulating the Government of Quebec in particular, will have the Effect to quiet the apprehensions, and remove the Prejudices which ill designing Men have so artfully endeavoured to create.

The Attempt made to raise new Difficulties to Govt on the ground of the Petitions from the old Subjects in Quebec, was supported by the whole Strength of Opposition:[3]—how little Impression it made within Doors, will best appear from the great Majority in both Houses against the Proposition that was moved upon those Petitions ; and I have the Satisfaction to assure you, that it met with no greater Encouragement without Doors, and that, to all appearance, the People of England, in general, concur in the Measures which have been adopted for America.

I have also the Satisfaction to acquaint you, that an Account published here of a Skirmish between the King's Troops and the Provincials, in the Neighbourhood of Boston, of which, however we have received no Intelligence from General Gage, has had no other Effect than to increase that just Indignation, which every Friend to Government feels, for the Insult offered to the Constitution, in the rebellious Resistance to the Authority of Parliament, by the People in North America.

I am &ca

DARTMOUTH.

## CARLETON TO DARTMOUTH.[4]

MONTREAL 7th June 1775.

MY LORD! The 19th of last Month in the Evening, I received Intelligence from General Gage by Sea of the Rebels having commenced Hostilities

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[1] Canadian Archives, Q 11, p. 145.

[2] In this Carleton referred to the continued agitation of the British element against the change in the system of government introduced by the Quebec Act; he referred also to the circulation of a printed translation of the letter addressed to the Canadians by the Continental Congress at Philadelphia; Minutes of the Council were likewise enclosed. See Q 11, p. 129.

[3] Referring to the motion made in Parliament during the session of 1775 for the repeal of the Quebec Act.

[4] Canadian Archives, Q 11, p. 184. This despatch gives Carleton's account of the attack on Canada as the sequel to Gage's operations at Boston. It reveals also the surprising extent to which the general body of the French Canadians had adopted British ideas of personal liberty during ten years of British law and administration, as shown in their refusal to submit once more to the feudal authority of the noblesse under the restoration of the French system by the Quebec Act. Many documents of the period in addition to the few samples given, deal with this important crisis in Canadian government.

in the Province of the Massachusets, and Requesting I would send the 7th Regiment with some Companies of Canadians and Indians to Crown Point, in order to make a Diversion, and favour his Operations.

The next morning, Captain Hazen arrived Express at Quebec, and brought me an Account, that one Benedict Arnold said to be a native of Connecticut, and a Horse Jockey, landed a considerable Number of armed men at St. John's, distant from this Town eight Leagues, about eight in the Morning of the 18th, surprised the Detatchment of the 26th doing Duty there, consisting of a Serjeant and ten Men, and made them Prisoners, seized upon The King's Sloop, Batteaus, and every other Military Store, and a few Hours after departed, carrying off the Craft, Prisoners, and Stores they had seized.

From this Party We had the first Information of the Rebels being in Arms upon the Lakes, and of their having, under the Command of said Arnold, surprised Ticonderoga, Crown Point, the Detatchment of the 26th doing Duty at these two Places, and all the Craft employed upon those Lakes ; Arnold told Captain Hazen, He had for that Purpose received a Commission of Colonel from the Congress of the Massachusets, with the Command of five hundred Men, that Volunteers to the Amount of fifteen hundred followed him, but he did not wait for them all.

The same Evening another Express brought an Account of the Rebels having landed at St. John's a second Time, in the Night between the 18th and 19th, this Party was said to be three hundred strong, and that nine hundred more were at the Isle aux Noix ; this second Party however was not near so numerous as at first reported, and most probably would have been cut off by a Detatchment of one hundred Men from the 26th Regiment, under the Command of Major Preston, had they not been advised of the March of the Troops by one Bindon a Merchant of this Town, upon which they crossed the Sorel, and were fired at by the Troops, as they went down the River.

While this Party, Commanded by one Ethan Allen, said to be outlawed in the Province of New York, remained at St. John's, He sent a Letter by this same Bindon, addressed to one Morrison and the British Merchants of Montreal Lovers of Liberty, demanding a Supply of Provisions, Ammunition, and spirituous Liquors, which some of them were inclined enough to furnish, had they not been prevented.

The little Force we have in the Province was immediately set in Motion, and ordered to assemble at or near St. John's ; The Noblesse of this Neighbourhood were called upon to collect their Inhabitants, in order to defend themselves, the Savages of those Parts likewise had the same orders ; but tho' the Gentlemen testified great Zeal, neither their Entreaties or their Example could prevail upon the People ; a few of the Gentry, consisting principally of the Youth, residing in this Place, and it's Neighbourhood, formed a small Corps of Volunteers under the Command of Mr. Samuel

Mackay, and took Post at St. John's ; the Indians shewed as much Backwardness as the Canadian Peasantry.

The Consternation in the Towns and Country was great and universal, every Individual seemed to feel our present impotent Situation, for tho' in no Danger of internal Commotions, we are equally unprepared for Attack or Defence ; Not six hundred Rank & File fit for Duty upon the whole Extent of this great River, not an armed Vessel, no Place of Strength; the ancient Provincial Force enervated and broke to Pieces ; all Subordination overset, and the Minds of the People poisoned by the same Hypocrisy and Lies practised with so much Success in the other Provinces, and which their Emissaries and Friends here have spread abroad with great Art and Diligence ; had it not been for those few Troops, three hundred Rebels might have procured all the Arms, Ammunition, and Provisions, this Province can afford, and have kept Post at St. John's with great Security.

We are at present fortifying a Post there and at Oswegatchie, tho' there are other Avenues into the Province, I hope the above may be made sufficiently strong to resist any sudden Attack of this Sort ; a considerable Force here might not only secure ourselves, but assist General Gage in extinguishing the Flames of Rebellion in the other Provinces more speedily, I fear he has none to spare, and it may be too late in the year to have them from Europe, however I shall see what in our present Situation is further practicable for The King's Service.

Within these few Days the Canadians and Indians seem to return a little to their Senses, the Gentry and Clergy have been very useful upon this Occasion, and shewen great Fidelity and Warmth for His Majesty's Service, but both have lost much of their Influence over the People ; I propose trying to form a Militia, and if their Minds are favourably disposed, will raise a Battalion, upon the same Plan as the other Corps in America, as to Numbers and Expence, and were it established, I think, it might turn out of great public Utility ; but I have many Doubts whether I shall be able to succeed.

These Measures, that formerly would have been extremely popular, require at present a great Degree of Caution and Circumspection; so much have the Minds of the People been tainted by the Cabals and Intrigues, I have from time to time given Your Lordship some Information of, I am as yet uncertain whether I shall find it advisable to proceed in the aforementioned Undertaking ; to defame their King and treat him with Insolence and Disrespect, upon all Occasions to speak with the utmost Contempt of His Government, to forward Sedition and applaud Rebellion seem to be what too many of His British American Subjects in those Parts think their undoubted Right.

For my Part since my Return to this Province, I have seen good Cause to repent my having ever recommended the Habeas Corpus Act and English criminal Laws ; these Laws, now used as Arms against the

State, require more public Virtue, and greater Fidelity to their Prince, than is generally to be met with amongst the set of People here, that take the Lead upon all Occasions; To render the Colony of that Advantage to Great Britain, it certainly is capable of, would require the reintroducing the French Criminal Law, and all the Powers of it's Government.[1]

Our Communication with the other Provinces being entirely stopped, we run a Risk of being at a great Loss for Money, to defray the ordinary and extraordinary Expences, the Service here must be attended with, The Money Contractors, as well as Trade, at this Time of the Year, being used to procure large Supplies of Cash from New York and Philadelphia, with which Places We have at present no Intercourse ; if fifteen or twenty thousand Pounds were sent here as soon as possible, it would be of great Use to Government, which must lose considerably by the present low course of Exchange, likely to fall every Day ; could it be procured in Dollars, and some Part in small silver, the same would prove highly beneficial to this Country, where that species is become extremely scarce.

I am with much Respect and Esteem
Your Lordship's
Most Obedient and
Most Humble Servant

GUY CARLETON

Earl of Dartmouth
One of His Majesty's
Principal Secretaries
of State.
8th June

P. S. Since I wrote the above, I find the Rebels are returned, and have taken Post near to St. John's, and there have The King's Sloop and Major Skene's Schooner well armed, with several Bateaus ; tho' I have not as yet been able to procure exact Accounts of their Numbers or Intentions, I have Reason to believe from the imperfect Information already received, they are more in Number than upon their former Incursions.

G. C.

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[1] Two days later, June 9th, before leaving Montreal, Carleton issued a proclamation setting forth that rebellion had broken out in some of the neighbouring colonies, and that the province of Quebec had been invaded by rebels with arms and divers false and seditious reports "tending to inflame the Minds of the People and alienate them from His Majesty." In order to meet a situation which he considered beyond the power of civil law, "I have thought fit to issue this Proclamation, hereby declaring that, until the aforesaid good Purpose can be attained, I shall, in virtue of the Powers and Authority to me given by His Majesty, execute Martial Law, and cause the same to be executed throughout this Province, and to that End I shall order the Militia within the same to be forthwith raised;" The proclamation was published in the *Quebec Gazette*, June 15, 1775. It was also given in Maseres Additional Papers, p. 170.

SESSIONAL PAPER No. 18

## CRAMAHÉ TO DARTMOUTH.[1]

QUEBEC 21st Sepr 1775.

My Lord !

I am sorry to transmit to Your Lordship the disagreable account of a disagreable Business, some time in the Beginning of this Month, upon News of the Rebel Army approaching, General Carleton set out for Montreal in great Haste ; the 7th instant the Rebels landed in the Woods near St. John's, and were beat back to their Boats by a Party of Savages incamped at that Place ; in this Action the Savages behaved with great Spirit and Resolution, and had they remained firm to our Interests, probably the Province would have been saved for this Year, but finding the Canadians in General averse to the taking up Arms for the Defence of their Country, they withdrew, and made their Peace.

After their Defeat the Rebels retired to the Isle aux Noix, where they continued till lately, sending out some Parties, and many Emissaries, to debauch the Minds of the Canadians and Indians, in which they have proved too successfull, and for which they were too well prepared by the Cabals and Intrigues of these two last years ; We knew of their being reinforced, and very considerably, I suppose, as they appeared in Numbers near St. John's last Sunday Evening ; where or when they landed, or the Particulars since, we have but very imperfect Accounts of, all Communications with the Forts of St. John's and Chambli, being, as far as I can find, entirely cut off.

No Means have been left untried to bring the Canadian Peasantry to a Sense of their Duty, and engage them to take up arms in Defence of the Province, but all to no Purpose; The Justice must be done to the Gentry, Clergy, and most of the Bourgeosie, that they have shewen the greatest Zeal and Fidelity to the King's Service, and exerted their best Endeavours to reclaim their infatuated Countrymen ; some Troops, and a Ship of War or two, would in all likelihood have prevented this general Defection.

Some of the King's old Subjects have joined the Rebels, and it were to be wished all of them, inclined to that Cause, had done the same, we should be the safer for it, the Copy of an intercepted Letter from one of them is

[1] Canadian Archives, Q 11, p. 249. This and the succeeding letter from Chief Justice Hey give two other versions of the quite unexpected sequel to the Quebec Act. In the meantime Lord Dartmouth was fully relying upon Carleton's previous assurances of what could be expected from Quebec in support of the British interests on the continent, if only the French laws and system of government were re-established and the noblesse and clergy restored to their former ascendancy. Hence, when the crisis was precipitated at Boston, he wrote to Carleton, July 1st, 1775, saying that "the King relies upon the Loyalty & Fidelity of His Canadian Subjects for their Assistance to suppress Rebellion, and it is His Majesty's pleasure that you do, if you see no objection, immediately upon the Receipt of this Letter take the proper Steps for raising a Body of 3,000 Canadians in such form & manner as you shall judge most proper, to act as Light Infantry, either in a separate Corps, or in conjunction with His Majesty's other Troops, as shall, upon consulting Genl Gage, be thought most expedient." Q 11, p. 152. On receiving still worse news from Gage, Dartmouth writes again to Carleton, on the 24th of July, "and it having been judged proper, upon a consideration of these Despatches that the number of Men to be raised in Canada, should be double what was first proposed, It is His Majesty's Pleasure that instead of 3,000 Men which you were authorized to raise by my Letter of the 1st of July, the number to be raised be 6,000, and I have accordingly given directions for an additional supply of Arms, Cloathing, & Accoutrements in proportion." Q 11, p. 182.

herewith inclosed[1]; some Canadians, I understand, are with the Bostonians upon every Road.

As the ship this goes by sails to-morrow very early, I have not time to enter into particulars, Lt. Col. Maclean with about eighty of his new raised Corps, and twenty of the Fusileers, besides a Militia composed of the Inhabitants of the Town, is all that we have to repair it's Breaches, and defend it ; General Carleton, who is still at Montreal, has not received a Line from Your Lordship since the 15th of April, or from General Gage since the 3rd of July last.

I have the Honor to be with great Respect
My Lord !

Your Lordship's
Most Obedient and
Most Humble Servant
H. T. CRAMAHÉ.

Earl of Dartmouth
One of His Majesty's
Principal Secretaries
of State.

## CHIEF JUSTICE HEY TO THE LORD CHANCELLOR.[2]

QUEBEC Aug. ye 28th 1775.

My Lord

Since I had the honour of writing to your Lordship soon after my arrival here, by Captn. Brash, The affairs of this Province are so far in a better train as the apprehensions of any decisive invasion from the Garrisons of Crown Point and Ticonderoga seem to be removed by the lateness of the season, and an appearance of less alacrity on their Part for a business of that sort than they shewed a month ago, or when I dispatched my other Letter to your Lordship. Whether this arises from the fears which the Congress may have entertained of opening the wound they have given the Mother Country too wide to admit of being closed by treaty, or from those of Individuals in the danger of the attempt, I am at a loss to determine, & can only say, that, from some cause or other, the Expedition appears to be suspended, if not wholly abandoned, & unless they mean to take advantage of the winter when they may pass the Lake upon snow shoes, I should think the latter the most probable.

I could hardly expect to find credit with your Lordship for what I asserted of the backwardness of the Canadians when the situation of things here, made it necessary for Gen. Carleton to declare Martial Law, and call upon the Militia to turn out in defence of the Province;[3] unhappily! every

[1] This letter, which was in French, was signed by Jas. Livingston, who had come originally from New York State and who was a grain merchant living on the Sorel. See Q 11, p. 252.
[2] Canadian Archives, Q 12, p. 203.
[3] See note 1, p. 666,

day furnishes too many instances of it, and gives me an Idea of the real character of the Canadians very different from what I used to entertain, and constantly represented to your Lordship whenever I had occasion to speak of them. Your Lordship will remember how much has been said by us all of their Loyalty, obedience & Gratitude, of their habitual submission to Government, & their decent civil & respectfull demeanour to those who had the conduct of it, but time and accident have evinced that they were obedient only because they were afraid to be otherwise & with that fear lost (by withdrawing the troops) is gone all the good disposition that we have so often and steadily avowed in their names & promised for them in ages to come. Yet I am sometimes willing to think that fear, joined with extreme ignorance and a credulity hardly to be supposed of a People, have been overmatched by the subtilty & assiduity of some Colony agents who were very busy here last winter, & that they are not at bottom an ungenerous or disobedient People. That temperate management and gentle methods of persuasion and instruction may yet bring them to a sense of their duty & indeed their interest, & when they are made to understand that the true point of fear should be that of sitting still & not putting themselves into a state of defence, they will take arms not only for their present defence, but when supported by a body of the Kings troops be ready for any offensive Service that the times may demand; which in my poor opinion who pretend to nothing less than military knowledge, would strike more terrour into the Colonies than Gen. Gage's army doubled or trebled at Boston, where from the nature of the Ground & a thousand other circumstances there can be little hopes of making any decisive impression. But be that as it may, your Lordship who has indulged me in a freedom of expressing my thoughts with respect to this country upon points of less importance will forgive me upon one which appears to me so essential, tho it should happen to be a little out of my Line & fall more immediately within that of another to whose circumspection however & Judgement I pay the utmost deference, I mean the Governour's.

It appears to me that while England has a firm hold of this Country, which a good Body of troops & nothing else will give her, her cause with the Colonies can never be desperate 'tho' she should not have an inch of ground in her possession in any one of them, from this country they are more accessible, I mean the N. England People, (Paradoxical as it may seem) than even from Boston itself, & I believe it to be as true as any thing can be that has not been reduced to absolute proof that the Colonies without the assistance of England, would have been reduced from North to south by this Province in the last war. They thought so themselves, & the Pains they have taken to keep the Canadians quiet which a good appearance of troops from England would soon remove, convince me that they are in dread of it at this hour, and I do most firmly believe that if the army at Boston was removed here ready to begin its operations from hence in the spring & the fleet continued (if that could be done) to block up their ports

& prevent their trade, it would have a better effect & produce terms of accommodation more likely to be received than any other method that could be adopted, except that of pouring in the whole strength of G. Britain by sea & land & carrying destruction & Ruin thro' every accessible part of the Provinces. If this be so & there is any thing like truth in this observation what a melancholy thing it is to reflect in what a precarious situation this province stands by being deprived of the few Regiments we had here before these troubles broke out, so much so that the very preservation of it in the interest of the Crown depends more upon our Enemies than ourselves. we have hardly 500 men at St. Johns the most obvious pass to defend & are obliged to leave many others intirely neglected, & from what we have had occasion to see of the Canadians very little dependance is to be had upon them. They are terrified or corrupted to a degree that your Lordship can have no Idea of, & are impressed with the strangest ideas that ever entered into the minds of men. Sometimes they believe they are to be sent to Boston and nothing can persuade them that a few transports which are waiting for Provisions, are not lying in wait to receive them, at other times they are told that the People of Boston are fighting merely to prevent the return of the stamps, which they seem to think a matter of great Politeness & do not wish to see them disturbed in so good a work. Some amongst them believe they are sold to the Spaniards (whom they abominate) & that Gen. Carleton has got the money in his Pocket, in short such a mixture of ignorance fear credulity perverseness & Prejudice never yet I believe took possession of the human mind or made it more difficult to know what to do with them. in this situation it will readily occur to your Lordship that our only object at present is to keep these Ruffians from invading us in the course of the winter, & wait 'till better & more sober times for the Establishment of the Country under the new Act of Parliament. And yet something of that sort at least in a temporary way must be done and is indeed in agitation at present, in the course of which as far as it has gone it is wonderfull to observe as great an instance of folly & strange infatuation amongst the Canadians as in the article of the Militia. what will be your Lordships astonishment when I tell you that an act passed for the express purpose of gratifying the Canadians & which was supposed to comprehend all that they either wished or wanted is become the first object of their discontent & dislike. English officers to command them in time of war, & English Laws to govern them in time of Peace, is the general wish. the former they know to be impossible (at least at present) & by the latter if I understand them right, they mean no Laws & no Government whatsoever— in the mean time it may be truly said that Gen. Carleton had taken an ill measure of the influence of the seigneurs & Clergy over the lower order of people whose Principle of conduct founded in fear & the sharpness of authority over them now no longer exercised, is unrestrained, & breaks out in every shape of contempt or detestation of those whom they used to behold with terror & who gave them I believe too many occasions to express it. And they on

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their parts have been and are too much elated with the advantages they supposed they should derive from the restoration of their old Priviledges & customs, & indulged themselves in a way of thinking & talking that gave very just offence, as well to their own People as to the English merchants. The little I have seen of them in Council gives me no Idea of their Abilities or moderation inflexible to any arguments either of expediency or Justice they will admit no alteration in their antient Laws particularly in the article of commerce which I insist upon, & believe shall carry in favour of the English merchants, with whom almost the whole trade of the country lyes, & which without them was & without them will continue except in a very few articles & those to no extent, a country of no trade at all in short & to relieve your Lordship from this unpleasant prospect of things in detail, Let me say in general that this country affords as gloomy an one in point of security & in the ill humours & evil dispositions of its inhabitants, to one as anxious as I hope I am for the prosperity of my own deeply interested in this, as can be imagined. For the share I have been made to take in it, tho' the most distant from my wishes I repent not but on the contrary will much rejoyce if I shall be found to have been an instrument in preventing a still more ruinous state of things, or may be made the means of restoring them to a better. That is at present all my consolation in an office to which I find myself as little equal as I am inclined, & from which I will expect of your Lordships bounty (I had allmost said Justice considering the great weight your Lordships recommendation had in sending me a second time hither) an honourable & decent retreat. in your Lordships own department I neither expect nor desire it, such of the Employments in your Lordships disposal as require legal ability to fill them I am unequal to in every light, & to those that do not, there must be so many that have better Pretensions to your Lordships favour, indeed there can be none that have less, I do not presume to request. I will hope however for your Lordships general Protection & Countenance & will trust that you will concurr with the rest of his Majestys Ministers in thinking that ten years honest, however imperfect, Endeavours to serve the Crown in an unpleasant & something critical situation deserve to be compensated with moderate & reasonable means of Retirement which I should prefer to the first office of distinction or Profit that the Crown has to bestow.

In this hope I take my Leave of your Lordship desiring your Lordship will be so good as present my best respects to Lady Apsley & Miss Bathurst, & believe me with most perfect Esteem & Gratitude

My Lord
Y$^{r}$ Lordships most obliged & most
Obed. Hble Sert.
W. HEY.

P. S. It is I hope unnecessary for me to say that I would have executed your Lordships commission with respect to the Nut trees if I could have

found an opportunity, but they are not the growth of this Province & your Lordship knows we have no communication with any other. I am told Lord Gage has trees of them of all sorts sent many years ago by his Brother the General from New York.

Sept$^{r}$ 11$^{th}$

I am sorry to be obliged to inform your Lordship that matters are much worse since I began this letter which I have not yet found an opportunity of sending No ship having sailed from hence to England during the Interval.

The Rebels are returned into this Province in great Numbers well provided with every thing & seemingly resolved to make themselves masters of this Province. Hardly a Canadian will take arms to oppose them & I doubt all we have to trust to is about 500 men & 2 small forts at St. Johns. Everything seems to be desperate & I cannot but fear that before this reaches your Lordship Canada will be as fully in the Possession of the Rebels as any other Province upon the Continent, I shall stay 'till every hope is gone which will I fear be but a short time.

Sep$^{r}$ 17$^{th}$. The Rebels have succeeded in making Peace with the Savages who have all left the Camp at St. John's many of the Canadians in that Neighbourhood are in arms against the King's Troops & not one hundred except in the Towns of Montreal & Quebec are with us. St. John's & Montreal must soon fall into their hands—& I doubt Quebec will follow too soon. In this situation I hold myself in readiness to embark for England where I possibly may be of some use your Lordship will I hope agree with me that I can be of none here.

Endorsed :—Original Letter from Mr. Hay chief Justice of Quebec to the Lord Chancellor dated Augt. 20$^{th}$ Sep$^{r}$ 11 & 17$^{th}$ communicated by his Lordship 12$^{th}$ Novemb$^{r}$ 1775.

## COMMISSION FOR A COURT OF APPEALS[1]

Quebec, 1$^{st}$ August, 1776.

George the Third by the Grace of God of Great Britain France and Ireland King Defender of the Faith, and so forth.

To our Governor, our Lieutenant Governor, and our chief Justice of our Province of Quebec for the time being.

Know ye that we have though fit to constitute and appoint and by these presents, which are to continue and be in force only during our royal will and pleasure, we do constitute and appoint you, or either of you, together with the other Members of our Council of our said Province, for the time being, or any five of them /provided no Member thereof shall sit or vote in any Cause which he shall have already heard or given judgment in/ to be a Court of Appeals within our said Province, with Power to receive appeals from any Court of Civil Jurisdiction within the same in all cases where the matter in dispute shall exceed the Value of Ten pounds lawful

[1] Canadian Archives, Q. 12, p. 131.

Money of Great Britain, and to revise and examine all the proceedings in the Court appealed from, and receive and admit any new evidence that may be offered by either party, and to hear and determine all such Appeals, and pronounce final Judgment therein, and to put the same in Execution, with like Power and Authority as the Court from which the Appeal shall come, Saving always to all parties, who may think themselves aggrieved by any such Judgment, a right of Appealing to us in our Privy Council, in all cases where the Value of the matter in dispute shall exceed the sum of Five hundred Pounds of Lawful Money of Great Britain, or where the matter in question shall relate to the taking or demanding any duty payable to us, our Heirs or Successors, or shall concern any fee of Office, or annual rents, or other such like matter or thing, where the rights in future may be bound, though the immediate sum or Value appealed for does not amount to the Sum of Five hundred Pounds, or where the appeal shall be from any Judgment imposing any fine for any misdemeanour, where such fine shall exceed the Sum of One hundred Pounds of Lawful Money of Great Britain, Provided that in all such cases security be first duly Given by the Appellant or Appellants that he or they will effectually prosecute such appeal and answer the Condemnation, and also pay such costs and damages as shall be awarded by us in case the Judgment or Sentence of our said Court of Appeals shall be affirmed. We do nevertheless hereby give Power and Authority to our said Court of Appeals so constituted as aforesaid to put the Sentence or Judgment pronounced thereby in Execution, notwithstanding such appeal unto us in our Privy Council, in case good and Sufficient Security shall be first given by the Appellee, or Appellees, to make full restitution of whatever loss or damage the Appellant or Appellants shall sustain by means of such Sentence or Judgment, in case the same shall be by us reversed, and restitution awarded to the Appellant or Appellants. In Testimony whereof we have caused these our Letters to be made Patent and the Great Seal of our said Province to be hereunto affixed, and to be entered on Record in one of the Books of Patents in our Registers Office of Enrolments of our said Province, Witness our Trusty and welbeloved Guy Carleton our Captain General and Governor in Chief in and over our said Province, Keeper of our Great Seal of our said Province, Vice Admiral of the same, &c$^{a}$. &c$^{a}$. &c$^{a}$. General and Commander in Chief of our Forces in our said Province and the Frontiers thereof, &c$^{a}$. &c$^{a}$. &c$^{a}$. At our Castle of Saint Lewis, in our City of Quebec in our Province aforesaid the First day of August in the year of our Lord one thousand Seven hundred and Seventy Six, and in the Sixteenth year of our Reign.

By His Excellency's Command,

Counter Signed/ GEO. ALLSOPP. (Signed) GUY CARLETON.

I do Certify that the Commission above transcribed, is a true copy of the original upon Record in the office of Enrolments of the Province of Quebec.

GEO. ALLSOPP

# COMMISSION FOR COURT OF CIVIL JURISDICTION.[1]

23rd July 1776.

George the Third by the Grace of God of Great Britain France and Ireland King Defender of the Faith, and so forth.

To our Trusty and welbeloved Adam Mabane, Thomas Dunn and John Claude Panet of our City of Quebec in our Province of Quebec in North America, Esquires, Greeting.

We reposing especial trust in your Loyalty, Integrity, Learning and Abilities, have thought fit to Constitute and Appoint and by these presents do Constitute and Appoint you the said Adam Mabane Thomas Dunn and John Claude Panet to be the Judges of a Court with Civil Jurisdiction within the District of Quebec in our Province of Quebec during pleasure only, hereby granting unto you or any two of you full power and Authority to take cognizance of and proceed in all civil causes and Complaints whatsoever and such civil causes and Complaints to hear and determine according to Law, with Power to sit and hold Courts for the Purposes aforesaid within the District aforesaid as often as occasion shall require, and to Correct and punish all Contemptuous Persons and Contemptuous absenters of themselves, and to promulge and interpose all manner of sentences and decrees and to put the same in Execution, together with all necessary Powers Jurisdictions and Authorities to put the same in Execution saving always the right of appealing to our Court of Appeals in our said Province, hereby committing unto you the said Adam Mabane Thomas Dunn and John Claude Panet our Power and Authority in and concerning the Premises, and we do further in our Name Command, and Firmly and Strictly charge all Justices, Justices of the Peace, Sheriffs, Marshalls, Keepers of all our Jails and Prisons, Bailiffs, Constables and all other our Officers and Ministers and faithful and liege Subjects in and throughout the said District of Quebec that in the Execution of this our Commission they be from time to time aiding and assisting, and yield obedience unto you in all things as is fitting under pain of the Law, and the Peril which will fall thereon.

Given at our Castle of Saint Lewis in our City of Quebec in our Province aforesaid, under the Great Seal of our said Province of Quebec, on the Twenty third day of July in the year of our Lord one thousand Seven hundred and Seventy Six and of our Reign the Sixteenth. Witness our

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[1] Canadian Archives, Q 12, p. 124.

In a letter to Germain dated Quebec, 10th August, 1776, Carleton explains "As neither the Season or Circumstances of the Province, at this time, admit of calling together the Legislative Council, and establishing the Courts of Justice by Ordinance I issued a Commission for that Purpose in the Districts of Montreal and Quebec, and in the same manner have established a Court of Appeals: Copies of these Commissions are herewith inclosed," see Q 12, p. 119. This and the following are the commissions referred to. They mark the resumption of civil government in the province. On August 14th, 1776, the members and chief officials of the Council, together with a number of leading citizens, were appointed the first Justices of the Peace since the passing of the Quebec Act and the proclamation of Martial Law. See Commissions, etc., vol. I, 1760–80.

Trusty and welbeloved Guy Carleton our Captain General and Governor in Chief in and over our said Province, Keeper of our Great Seal of our said Province, Vice Admiral of the same, &c$^{a}$ &c$^{a}$ &c$^{a}$ General and Commander in Chief of our Forces in our said Province and the Frontiers thereof, &c.$^{a}$ &c$^{a}$. &c$^{a}$.

(Signed) GUY CARLETON

By his Excellency's Command,

Counter Signed/ GEO: ALLSOPP

The foregoing Commission is a true Copy of the Original upon Record in the Office of Enrolments at Quebec.

GEO. ALLSOPP

## CARLETON TO GERMAIN.[1]

CHAMBLI 28$^{th}$ Sept$^{r}$ 1776.

My Lord

I have received Your Lordships letter of the 21$^{st}$ of June[2] and cannot but think myself highly honoured by the notice His Majesty is pleased to take of my Services, for which I shall allways remain very thankfull.

Your Lordship having expressed a "regret that I neither specified the "actual force of the Rebels, nor communicated the Intelligence I received ; "nor the conjectures I formed relative to their intentions." Also that my "Silence as to my own intended operations, and the present disposition of "the Canadians was much to be lamented because the ignorance in which "I left you concerning these matters render[e]d it impossible for you to "convey to me, for the present any further Instructions."[3]

* * * * * *

As to my opinion of the Canadians, I think there is nothing to fear from them, while we are in a state of prosperity, and nothing to hope for when in distress ; I speak of the People at large ; there are among them who are guided by Sentiments of honour, but the multitude is influenced only by hopes of gain, or fear of punishment.

I have given my opinion so amply on the affairs of Canada, how much the Canadians may be depended upon, and under what circumstances they may be usefull, in former letters which lie in your Lordships office, that I must beg leave to refer you to them ; particularly to one marked *secret*, I think it was wrote in 1769, to the Earl of Hillsborough;[4] also to copies of

[1] Canadian Archives, Q 12, p. 188. On Jan. 25th, 1776, Lord Geo. Sackville Germain succeeded Lord Dartmouth as Colonial Secretary, or Secretary of the American Department, as it was frequently named at that period.

[2] Conveying the King's approval of his conduct and that of his officers and of the garrison, merchants and others in defending the town of Quebec against the attacks of the invading forces under Montgomery and Arnold. See Q 12, p. 44.

[3] Here follow details of military plans and operations for maintaining the command of Lake Champlain.

[4] This is evidently the letter of Nov. 20th, 1768, marked "Secret Correspondence," in which he points out the important position which Canada might occupy in maintaining British interests on the Continent if the Canadian noblesse, through whom the peasantry and the Indians might be secured, were restored to the influence and power which they held under the French system. See p. 325.

my Letters to General Gage in February 1775[1]—and early in 1767,[2] in which, and indeed in all my political letters, I had a war of this sort constantly in view, as your Lordship may perceive upon perusal, and have not now the least reason to change my opinion of these matters.

The second division of the Brunswick Troops[3] is arrived, except about half the Regiment of Specht, in the Vriesland Transport. They are on their march, and I expect their last Division will arrive at St. Johns about the middle of October.

I am my Lord
with all due respect
Your Lordships
most obedient
and most
humble servant
GUY CARLETON.

Lord George Germain

## CARLETON TO GERMAIN.[4]

Quebec 9th May 1777

My Lord !

I received by Captain Le Maistre, who arrived here with General Burgoyne in the Apollo the 6th instant, your Lordship's several Dispatches from N°. 3. to No. 7. inclusive, Your seperate Letter of 26th March last, and the others from N° 9 to No. 16 inclusive, with the annexed Papers.[5]

Inclosed herewith, I now transmit to Your Lordship the Ordinances, that have passed in the Session of His Majesty's Council, held here this last Winter ;[6] these Ordinances have been framed upon the Principle of securing the Dependence of this Province upon Great Britain, of suppressing that Spirit of Licentiousness and Independence, that has pervaded all the British Colonies upon this Continent, and was making, through the Endeavours of a turbulent Faction here, a most amazing Progress in this Country ; and in the Hopes of rendering Canada of Use to Great Britain by it's Military Strength, as well as by it's Commerce.

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[1] His recent letter of 4th Feb. 1775. See p. 660.

[2] Referring to his letter of 15th Feb., 1767. See p. 280. This is to much the same purpose as that to Hillsborough in Nov., 1768.

[3] In a note from George III to Lord North, 12th Nov., 1775, referring to the distribution of the German mercenaries to be employed in the colonies, the King says, "The Troops of the Duke of Brunswick shewed so much want of courage last war, that Carleton, who can have but a small number of British Troops, ought to have the Hessians." Letters of George III to Lord North in Lord Broughman's Statesmen of the Time of George III." Vol. 1, p. 93.

[4] Canadian Archives, Q 13, p. 96.

[5] These despatches refer almost entirely to military matters. They will be found as follows: Nos. 3 to 7 in Q 12, pp. 84, 86, 88, 90, 92; Nos. 9 to 16 in Q 13, pp. 80, 81, 82, 83, 85, 87, 90 & 93. The separate letter of 26th March gives instructions as to the disposal of the troops sent to Quebec. Three thousand were to be retained in the Province and the remainder sent on two expeditions, one under Burgoyne and the other under St. Leger. That under Burgoyne was the famous expedition which met with disaster at Saratoga.

[6] See list of Ordinances given below, p. 678.

SESSIONAL PAPER No. 18

There is no Doubt, but the Canadians may again be reduced to that state of Deference and Obedience, which they formerly paid their ancient Government, tho' it must necessarily be the work of some time ; untill it is firmly accomplished, it will require a Military Force to support the Civil Authority ; the Noblesse, Clergy, and greater Part of the Bourgeoisie, in the Course of the present Troubles, have given Government every Assistance in their Power, and will greatly help in restoring a proper subordination,[1] without which all Regulations are vain ; but this depends still more on Your Lordship's Office, and the King's confidential Servants at Home, without whose steady concurrence, all the Efforts of a Provincial Administration, for many years, must come to nothing.

Some of the British Traders here having taken up the Idea of a Chamber of Commerce, in place of Juries, a Plan was accordingly drawn up, which is herewith inclosed ; the Militia Ordinance is to continue only for two Years by Way of Trial, and as an Essay towards training the Canadians to Obedience by Degrees, untill we have time to perfect a more solid and permanent system, if our present Tranquility continues uninterrupted, we shall be able next Session, I hope, to make a further Progress in the settlement of this extensive Province.[2]

With these Ordinances your Lordship will receive a Proclamation, prohibiting the Exportation of Cattle and live Stock for this Year, and of Corn, Flour, and Biscuit, untill our Victuallers arrive, and we can hear how His Majesty's Forces to the Southward, under the Command of Sir William Howe, are supplied.

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[1] There are numerous references in the documents of the period, to the strong objections which the general body of the French Canadians manifested at being subjected once more to the feudal control of the noblesse. Gen. Burgoyne, in a letter to Lord Germain, May 14th, 1777, says he finds it impossible to obtain much assistance from the Canadians, and this he attributes to two causes; "I believe principally to the unpopularity of their Seigneurs, & to the poison which the Emissaries of the rebels have thrown into their minds." Q 13, p. 108. Having made further complaints on the same score to Carleton and Germain, Carleton answers him, on the 29th May, in the following manner:—"The Desertion you give me Notice of in your Letter of 26th instant does not surprise me, it has been the same here, and was no more than what I expected; if Government laid any great Stress upon Assistance from the Canadians, for carrying on the present war, it surely was not upon Information proceeding from me, Experience might have taught them, and it did not require that to convince me, these People had been governed with too loose a Rein for many years, and had imbibed too much of the American Spirit of Licentiousness and Independence administered by a numerous and turbulent Faction here, to be suddenly restored to a proper and desirable Subordination." Q 13, p. 222.

[2] In another letter, of July 10th, 1777, to Germain, Carleton throws further light on this subject:—"That in the Beginning, I might not have the Disobedience of great Numbers to contend with, under many Disadvantages, a small Force in Arms was demanded of the Province for this Season, and agreable to their former Plan of Service; in Order to reconcile them by Degrees, to what under the French Government was deemed an indispensable Duty." He then refers to the more successful effort to raise an additional force by the volunteer system, and, in response to Burgoyne's request and Germain's expectation, he had ordered a Corvée of 500 men to follow the army. "Nevertheless Your Lordship will be pleased to observe, that these services are a considerable Burthen upon the People, and that after the Disuse of them for many years, it is not surprising, they should forget the Duty, to which they were bound by the Tenure of their Lands, and their original Government, Nor is it a Matter of Wonder, that after so many concurring Circumstances to destroy that Obedience, for which they formerly were remarkable, and to encourage all Kind of Disrespect to the King's Authority in this Province, that I should meet with Difficulties in restoring those ancient Usages, without either Laws, Strength in Government, or even Your Lordship's Countenance as Minister, to assist me;" Q 13, p. 333.

We have no Parchment in the Province, or the Ordinances should have been transcribed thereon.

I am with all due Respect
My Lord !
Your Lordship's
Most Obedient And
Most Humble Servant
GUY CARLETON

* * * * * *

Lord George Germain
One of His Majesty's Principal
Secretaries of State.

## ORDINANCES PASSED IN THE SESSION OF THE LEGISLATIVE COUNCIL OF QUEBEC THAT WAS HELD IN JANY, FEBY, MARCH, & APRIL 1777—[1]

1. For Establishing Courts of Civil Judicature in the Province of Quebec.

2. To regulate the Proceedings in the Courts of Civil Judicature in the Province of Quebec.

3. For ascertaining Damages on protested Bills of Exchange, and fixing the Rate of Interest in the Province of Quebec.

4. For regulating the Markets of the Towns of Quebec and Montreal.

5. For establishing Courts of Criminal Jurisdiction in the Province of Quebec.

6. Declaring what shall be deemed a due Publication of the Ordinances of the Province.

7. To prevent the selling of strong Liquors to the Indians in the Province of Quebec, as also to deter Persons from buying their Arms or Cloathing, and for other Purposes relative to the Trade and Intercourse with the said Indians.

8. For regulating the Militia of the Province of Quebec, and rendering it of more general Utility, towards the Preservation and Security thereof.

9. For regulating the Currency of the Province.

10. Concerning Bakers of Bread in the Towns of Quebec and Montreal.

11. For repairing and amending the public Highways and Bridges in the Province of Quebec.

12. Empowering the Commissioners of the Peace to regulate the Prices to be paid for the Carriage of Goods, and the Passage of Ferries in the Province of Quebec.

[1] This list of Ordinances—the first passed after the Quebec Act—was also enclosed in Carleton's letter of May 9th. Canadian Archives, Q 13, p. 103. Nos. 1, 2, & 5 are given in full below, pp. 679 et seq.

13. For Preventing Accidents by Fire.

14. For preventing Persons leaving the Province without a Pass.

15. To empower the Commissioners of the Peace to regulate the Police of the Towns of Quebec and Montreal for a limited Time.

16. Concerning the Distribution of the Estates and Effects of Persons leaving the Province without paying their Debts.

(Copy.)

## AN ORDINANCE FOR ESTABLISHING COURTS OF CIVIL JUDICATURE IN THE PROVINCE OF QUEBEC.[1]

Preamble.

Whereas it is necessary to establish Courts of Civil Judicature for the speedy Administration of Justice within this Province ; It is therefore Ordained and Enacted by His Excellency the Captain General, and Governor in Chief of this Province, by and with the Advice and Consent of the Legislative Council of the same, That,

Division of the Province into Two Districts.

Art. 1. For the Ease and Convenience of His Majesty's subjects residing in different Parts of this Province, the same shall be and hereby is divided into Two Districts, to be called and known by the names of Quebec and Montreal, which said Districts shall be divided and bounded by the River Godfroy on the South, and by the River S$^{t}$ Maurice on the North side of the River S$^{t}$ Lawrence.

Establishment of a Court of Common Pleas for each District; to sit one day at least in

Art 2. A Court of Civil Jurisdiction, to be called the Court of Common Pleas, shall be, and hereby is erected, constituted, and established for each of the said Districts, the one whereof shall sit at the City of Quebec, and the other at the City of Montreal, at least one Day in every week, for the decision of

[1] Canadian Archives Q 62 A-2, p. 586. The basis of these and the following Ordinances is given in Hey's draught of an Ordinance for Establishing Courts of Justice in the Province of Quebec, given in full p. 673, and outlined in the 14th and 15th articles of the Instructions to Governor Carleton 1775. See p. 600. On the 21st January, 1777, the Legislative Council was convened for the first time since September 2nd, 1775, and proceeded to take up, as the most important item of business, the establishment of regular courts of justice. The Attorney General, Wm. Grant, had been employed, evidently on the basis of Hey's draught and in many consultations with the Governor, in framing the heads of a general ordinance on the subject which was submitted to the Council on January 27th. Each member was asked to communicate his observations in writing. Mr. Grant, after consultation with the Committee of Council, divided the general draught into three separate ordinances, as finally passed. Mr. Grant's connection with the framing of these ordinanccs is indicated in the details of his account for fees. See Public Accounts of the Province of Quebcc 1777–8. On January 31st, Hon. James Cuthbert submitted in writing his contention on behalf of the Seigniors, that inasmuch as the Quebec Act had provided for as complete a restoration as possible of the French rights, usages, and customs before the Conquest, the clauses in the Ordinance with reference to Courts should hold good "only untill the seigniors, who have the right of holding civil courts of Justice in their several seigniories, shall establish Judges there, with the approbation of the Governor, Lieutenant Governor, or Commander in chief, for the time being." Minutes of Leg. Council, Vol. D., p. 9. Mr. Gugy, on similar grounds, raised the point "Whether it would not be proper, in order to conform with the antient customs and usuages of this province, that all matters which concern seigniors, as well as those between habitant and habitant, as between seignior and seignior, should be heard and determined sommarily, and without any charges, by the Governor, Lieutenant Governor, Chief Justice, or some other person appointed for that purpose." Ibid., p. 10.

every Week, in matters exceeding £10 Sterling, & another day in matters of or under that Sum; except in Vacation Times.

Causes in which the Value of the matter in Dispute shall exceed Ten Pounds Sterling ; and another Day in every week for the Decision of Causes in which the matter in Dispute shall be of or under the Value of Ten Pounds Sterling, and shall so continue their Sittings throughout the whole Year, excepting Three Weeks at Seed Time, a Month at Harvest, and a Fortnight at Christmas and Easter, and except during such Vacations as shall be appointed by the Judges for making their Circuits Twice Every Year through their separate Districts. The said Courts shall have full Powers, Jurisdiction, and Authority, to hear and determine all matters of Controversy relative to Property and Civil Rights, according to the Rules prescribed by an Act of Parliament made and passed in the Fourteenth Year of the Reign of His Present Majesty, intituled, "An Act for making more "effectual Provision for the Government of the Province of "Quebec, in North America," and such Ordinances as may hereafter be passed by the Governor and Legislative Council of the said Province.

Rule of Decision.

Two Judges necessary to make a Court.

Art 3. In matters above the Value of Ten Pounds Sterling, the Presence of Two Judges shall be necessary to constitute a Court of Common Pleas ; the Decision of which Court shall be final in all cases where the matter in Dispute shall not exceed the Value of Ten Pounds Sterling, except in matters which may relate to taking or demanding any Duty payable to His Majesty, or to any Fee of Office, or Annual Rents, or other such like matter or Thing, where the Rights in future may be bound, in which Cases, and also in all Matters that exceed the said Value of Ten Pounds sterling, an Appeal shall lie to the Governor and Council ; provided Security be duly given by the Appellant, that he will effectually prosecute the same, and answer the Condemnation ; as also pay such Costs and Damages as shall be awarded, in case the Judgment or Sentence of the Court of Common Pleas shall be affirmed.

Their Decision to be final in matters under £10 Sterling except in certain Cases; In which excepted Cases, and in matters above that value, Appeal to be to the Governor and Council. Giving good security.

The Governor and Council made a Court of Appeals.

Art 4. The Governor and Council are hereby erected and constituted a Superior Court of Civil Jurisdiction (whereof in the absence of the Governor and Lieutenant Governor, the Chief Justice shall be President) for hearing and determining all Appeals from the inferior Courts of Civil Jurisdiction within the Province, in all cases where the matter in Dispute shall exceed the Sum of Ten Pounds Sterling, or shall relate to the taking or demanding any Duty payable to His Majesty, or to any Fee of Office or Annual Rents, or other such like Matter or Thing, where the Rights in future may be bound, though the immediate Sum or Value appealed for be less than Ten Pounds Sterling. And any Five Members of the said Council (the Judges who

shall have given the Judgment appealed from excepted) with the Governor, Lieutenant Governor, or Chief Justice, shall constitute a Court for that Purpose, which shall sit the first Monday in every Month throughout the year, and continue sitting each Month as long as the Business before it may require: And the said Court of Appeals shall have Power to revise and examine all the Proceedings in the Court below, and to correct all errors both in Fact and in Law, and to give such Judgment as the Court below ought to have given, and on Judgment to award and issue such Execution as the Law shall direct.

The Governor, Lieutenant Governor, or Chief Justice with any Five Members to constitute a Court.

Art 5. The Judgment of the said Court of Appeals shall be final in all cases where the matter in Dispute shall not exceed the Value of £500 Sterling ; but in all cases exceeding that Value, an Appeal shall lie to His Majesty in His Privy Council, provided security be first duly given by the Appellant, that he will effectually prosecute his Appeal, and answer the Condemnation, as also pay such Costs and Damages as shall be awarded by His Majesty in His Privy Council, in case the Sentence of the said Court of Appeals shall be affirmed. An Appeal shall likewise lie to His Majesty in His Privy Council from the Judgment of the said Court of Appeals in all cases where the matter in Question shall relate to the taking or demanding any Duty payable to His Majesty, or to any Fee of Office, or Annual Rents, or any such like matter or Thing, where the Rights in future may be bound, though the immediate Sum or Value appealed for be less than £500 Sterling ; and in all cases where Appeal shall be allowed to His Majesty in His Privy Council, Execution shall be suspended until the final determination of such Appeal, provided Security be given as aforesaid.

The Judgment of the Said Court to be final in all matters not exceeding the value of £500 Sterling.

Appeals allowed in matters above that Value to His Majesty in Council.

Other Cases in which Appeal shall be allowed to His Majesty in Council.

Art 6. All Judgments, Sentences and Executions of the Courts of Civil Jurisdiction, which it has been found necessary to establish since the 1st May 1775, are hereby ratified and confirmed,[1] subject nevertheless to an Appeal to the said Court of Appeals, in matters exceeding the value of Ten Pounds Sterling, and in Cases where Rights in future may be bound.

Judgments Sentences and Execution of the Courts of Civil Jurisdiction, established since the 1st of May 1775, confirmed; subject to an Appeal.

Art 7. Any Party meaning to Appeal from any Judgment, either of the said last-mentioned Courts, or of the Courts of Civil Jurisdiction subsisting in the Province before the 1st of May 1775, shall sue out the Writ of Appeal within Three Months

Appeal from the Judgments of all the Courts heretofore established

[1] The Quebec Act coming into force May 1st, 1775, "all and every the Ordinance and Ordinances made by the Governor and Council of Quebec for the time being relative to the Civil Government and Administration of Justice in the said Province, and all Commissions to Judges and other Officers thereof, be, and the same are hereby revoked, annulled, and made void from and after the first day of May, one thousand seven hundred and seventy-five." (Clause 4). But as the invasion of the Province had prevented the Council from proceeding with the framing of new ordinances, the legal system had to be placed upon a provisional basis for the time being. See Carleton to Germain, Aug. 10th, 1776, Q 12, pp. 119, 124, 131.

to be prosecuted within Three Months.

after the Publication of this Ordinance, after which Period the same will not be allowed.

All Matters undetermined in any former Court of Appeals to be transmitted to the Court of Governor and Council.

Art 8. All Actions instituted in any of the Courts of Civil Jurisdiction subsisting in the Province before the 1st of May 1775, or in those established since the 1st of May 1775, and remaining undetermined therein, shall be transmitted to the Courts of Common Pleas hereby established for the respective Districts, to be proceeded upon to Judgment, as if the same had been commenced therein ; also all Matters remaining undetermined in any Court of Appeals heretofore subsisting in this Province shall be forthwith transmitted to the Court of Appeals hereby established, to be proceeded upon therein to Judgment and Execution.

GUY CARLETON

Ordained and Enacted by the Authority aforesaid, and passed in Council, under the Great Seal of the Province at the Council Chamber in the Castle of St Louis, in the City of Quebec, the 25th day of February, in the seventeenth year of the Reign of our Sovereign Lord George the Third, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith and so forth, and in the year of our Lord 1777.

By His Excellency's Command

J: WILLIAMS

C.L.C.

(Copy)

Cap. II.

## AN ORDINANCE TO REGULATE THE PROCEEDINGS IN THE COURTS OF CIVIL JUDICATURE IN THE PROVINCE OF QUEBEC.[1]

Preamble.

Whereas it is necessary for the Ease and Convenience of His Majesty's subjects who may have Actions to prosecute in the Courts of Civil Judicature established in this Province, that the mode of Administering Justice in the said Courts should be clearly ascertained, and rendered as plain as possible : It is therefore Ordained and Enacted by his Excellency the Captain General and Governor in Chief of this Province, by and with the Advice and Consent of the Legislative Council of the same, That

[1] Canadian Archives, Q 62 A-2, p. 568.

SESSIONAL PAPER No. 18

Manner of proceeding in Actions above the Value of £10 Sterling.

Art. 1. In all cases or Matters of Property, exceeding the Sum or Value of £10 Sterling, upon a Declaration presented to any one of the Judges of the Court of Common Pleas, by any Person, setting forth the Grounds of his Complaint against a

Suing out the Summons.

Defendant, and praying an Order to Compel him to appear and answer thereto, such Judge shall be, and hereby is empowered and required in his separate District to grant a Writ of Summons in the Language of the Defendant, issuing forth in His Majesty's Name, tested and signed by one of the Judges, and directed to the Sheriff of the District, to summon the Defendant to appear and answer the Plaintiffs Declaration on some certain future day, Regard being had to the Distance of the Defendant's abode from the Place where the Court sits ; but if the Judges, or any Two of them are satisfied, by the Affidavit of the Plaintiff, or otherwise, that the Defendant is indebted to him, and on the point of leaving the Province, whereby the Plaintiff might be deprived of his Remedy against him ; it shall be lawful for the said Judges, or

Attachment against the Body where a Debtor is going to leave the Province.

any Two of them, to grant an Attachment against the Body of such Defendant, and hold him to Bail, and for Want of Bail to commit him to Prison until the Determination of the Action against him : The Declaration shall in all cases accompany the

Declaration to accompany the Writ.

Writ, and the Plaintiff shall not be permitted to amend it until the Defendant shall have answered the matter therein contained, nor afterwards, without paying such reasonable Costs as the Court may ascertain.

Service thereof.

Art 2. Copies both of the Writ of Summons, and the Declaration, shall be served on the Defendant personally, or left at his House with some grown Person there, otherwise the Service shall be deemed insufficient.

If Defendant does not appear,

Art 3. If on the Day of the Return of the Writ of Summons the Defendant does not appear in Person, or by Attorney (Proof of such Service being produced or made in Court) the Plaintiff shall obtain a Default against the Defendant, and if on calling over the Action in the next Weekly Court Day the Defendant should still neglect to appear, without any good Reason for such his Neglect, the Court after hearing and receiving sufficient Proof of the Plaintiff's Demand, shall cause their final Judgment

Judgment to be entered.

to be entered against the Defendant, and shall award such Costs thereupon as they shall think reasonable, and issue such Execution as the Law, according to the nature of the case, may direct.

If Defendant appears, he is to answer the Declaration.

Art 4. If Defendant appears at the Return of the Writ of Summons, or, having made Default on that Day, pays such Costs as the Court may think reasonable, and appears on the next Weekly Court Day after such Return, he shall, either then,

or on such other Day as he may obtain from the Court, make his Answer to the Declaration, either in Writing or Verbally as he thinks fit, provided that if his Answer is Verbal the Clerk of the Court shall take down the substance thereof in writing, and preserve the same amongst the Records of the Court.

If the Plaintiff does not attend, the action to be dismissed with costs.

If the Plaintiff does not appear, or appearing does not prosecute his Action, the same shall be dismissed with Costs.

If the Parties differ in their State of Facts, Court shall ascertain the Facts necessary to be proved.

Art 5. If upon the Declaration and Answer, or such further Pleadings as the Court may, if it thinks proper, permit or direct, the Parties shall appear to differ essentially in their State of Facts, the Court shall ascertain and order the Clerk to take down in Writing, such Facts, material to the Decision of the Cause as it will proceed to receive Proof upon, and appoint a Day for hearing such Proofs as the Parties shall think proper to produce.

Manner of examining Witnesses; their Examinations to be taken down in Writing.

Art 6. In all Cases where Witnesses are produced they shall be examined and Cross Examined, viva voce, in Open Court, unless some good Reason is shewn to the Judges for departing from this Rule in particular Cases. The Examinations of the Witnesses shall be taken down in Writing by the Clerk, and filed among the Records of the Court.

English Rules of Evidence adopted in Commercial Cases.

Art 7. In the Proof of all Facts concerning Commercial Matters Recourse shall be had in all the Courts of Civil Jurisdiction in the Province, to the Rules of Evidence laid down by the English Laws.[1]

Of Appeals.

Party appealing to sue out a Writ, commanding the Judges to send up the Record.

Art 8. The Party meaning to Appeal from any Sentence or Judgment of any of the Courts of Common Pleas, shall sue out a Writ from the Court of Appeals, tested and signed by the Governor, Lieutenant Governor, or Chief Justice, stating that the Appellant complains of being aggrieved by the Judgment, and therefore commanding the Judges of the Inferior Court, or any Two of them, to send up the Original Papers and Proceedings in the Cause, and Transcripts of all Rules, Orders and Proceedings found in the Records or Registers of the Court concerning the same ; such Writ, when presented to any of the Judges of the Court below, shall be allowed by him, if the Appellant has given the requisite Security, and when allowed, the Clerk of the Court shall proceed to comply with the Order of the Writ, and the Judges, or any Two of them, shall make their Return against the Return Day thereof.

The Appellant to file his reasons of Appeal in Eight Days.

Art 9. If the Appellant does not within Eight Days after the Return of the said Writ, and the Transmission of the Proceedings, file his Reasons of Appeal, the Appellee shall obtain a Rule or order, that unless the Appellant's Reasons of Appeal

[1] Concerning this partial introduction of the English law in civil matters, notwithstanding the general policy of the Quebec Act, see article 12 of the Instructions to Carleton, 1775, p. 599. See also the attempt to extend the application of English Law. Note, p. 692.

are filed in Four Days, the Appeal will be dismissed, and if the said Reasons of Appeal are not filed within Four Days after Service of the said Rule on the Appellant or his Agent, the Appeal shall accordingly be dismissed with Costs.

Appellee to file his answers in Eight Days.

Art 10. Within Eight Days after the Reasons of Appeal are filed, the Appellee shall file his answers thereto, or if he neglects so to do the Appellant shall obtain a Rule or Order, that unless the Appellee file his Answers within Four Days he will be precluded from filing them after that Period ; and if his Answers are not filed within Four Days after Service of such Rule on the Appellee or his Agent, he shall accordingly be precluded from filing them, and the Court will proceed to hear the Cause on the part of the Appellant, and proceed to Judgment therein without the Intervention of the Appellee.

The Court, on good Cause Shewn, to prolong the Time above allowed

Art 11. The said Court of Appeals nevertheless shall and may, upon Application made, and good cause shewn by either of the Parties (Notice being given the other) prolong the Time allowed for filing either the Reasons of Appeal or Answers thereto, and in case the Court shall not be sitting at the Time when such Reasons or Answers ought regularly to be filed, the Party neglecting shall apply to the Court, at the next sitting thereof, and shew his Reasons for such his Neglect : and if the Court finds them insufficient, it will, as the case may be, either dismiss the Appeal, or proceed to hear it without the Intervention of the Appellee, as above directed.

Day to be fixed for hearing the Cause.

Art 12. When the Reasons of Appeal, and Answers thereto, are filed, the Court shall, on the Application of either of the Parties, fix on such convenient Day for the hearing of the Cause as to it may seem proper.

In Fifteen days after Judgment, execution to issue in case the Writ of Appeal be not allowed.

Art 13. If the Writ of Appeal is not allowed by one of the Judges of the Court below, and a Copy thereof served on the Appellee or his Agent within Fifteen days after any Judgment given in the Court of Common Pleas, Execution shall issue, and no Appeal shall be allowed or received from the Court of Common Pleas after the expiration of one Year from the Date of the Judgment of such Court.

No appeal allowed after a Year from the Date of the Judgment.

Art 14. The Executions sued out from any of the Courts of Civil Jurisdiction shall be a Writ issuing in the King's Name, tested and signed, when issuing from the Court of Appeals, either by the Governor, Lieutenant Governor, or Chief Justice, and when issuing from the Court of Common Pleas, by one of the Judges of the Court for the District in which it is given, directed to the Sheriff of the District, setting forth the Judgment of the Court between the Parties, and the kind of Execution which the Law, according as the case may be, shall direct, whether the

Of Executions, nature of the Writ

of Executions.

same be to take the Body, or to levy a Sum of Money out of any one's Goods and Chattels, Lands and Tenements, or to do any Special matter or Thing whatever ; the Date of the Judgment shall be indorsed on every Writ of Execution, and that Indorsement signed by the Judge.

Personals to be first disposed of, and if insufficient, Real Estate to be sold.

Art 15. In all Cases where execution shall issue against Real and Personal Estates, the Sheriff shall first dispose of the Personal Property, and if the Proceeds thereof fall short of the Amount of the Judgment the Real Estate, or so much thereof, as will produce the Amount, shall be sold for that Purpose.

Manner of selling Personals.

Art 16. Where Moveables shall be seized by the Sheriff under an Execution, he shall cause the seizure to be published at the Church Door, of the Parish, immediately after Divine Service, on the first Sunday succeeding such Seizure, and at the same time cause to be proclaimed the Day and Place when and where he intends to proceed to the sale thereof, provided that the Place of Sale shall be in the same Parish in which the Seizure is made.

Manner of selling Real Property.

Art 17. When Lands and Tenements shall be seized by the Sheriff under a Writ of Execution, he shall advertize the Sale thereof Three Several Times in the Quebec Gazette, to be on some certain Day after the expiration of Four Months from the Date of the First Advertisement, and proclaim the said Sale at the Church Door of the Parish in which the Premisses are situated, immediately after Divine Service, on the Three Sundays next preceding the same and Cause a Copy of the said Advertisement to be fixed on the Door of the Parish Church.

When Two or more Writs of Execution issue upon Judgments given the same Day, they are to be satisfied in the same Proportions.

Art 18. If Two or more Writs of Execution shall be issued upon Judgments given the same Day against the same Defendant or Defendants, and so marked on the Writs, such Executions shall have the same Privilege and be satisfied in the same Proportions, and the Sheriff, or other Person to whom such Writs of Execution shall be Awarded, receiving the same, is hereby authorized and Commanded, after the sale of the whole of such Defendant's Real and Personal Estate, where the Writ shall be awarded against both, in case the same should not be sufficient to satisfy the whole of such Judgments, to pay over and divide the Nett Produce of such sale or Sales, after deducting his own Costs and Charges, amongst the several Plaintiffs, in Proportion to the Amount of their Respective Judgments.

Allowance to the Sheriff.

Art 19. On every Execution the Sheriff shall be allowed all his Disbursements, and shall be authorized to charge over and above at the Rate of Two and an Half per centum, to be deducted out of the Money he levies.

Art XX

Proceedings in Actions under £10 Sterling

In Matters either not exceeding or under Ten Pounds Sterling, any Person having a Right of Action against another, shall prepare, or procure from the Clerk of the Court of Common Pleas, a Declaration in the following Form.

"$\frac{\text{Quebec}}{\text{Montreal}}$ } Day of 17

" A. B. Plaintiff. C. D. Defend-

"ant.—The Plaintiff demands of the Defendant the Sum of

" due to the Plaintiff from the Defendant, for

" which said Sum, though often demanded, still

"remains due, therefore the Plaintiff prays Judgment."

The Declaration shall be filed by the Clerk, who shall make a Copy thereof, and at the Foot of such Copy write out a Summons in the Language of the Defendant in the following Form, viz.

"To C. D. the Defendant in the Above Action—

"You are hereby commanded and required to pay the Plaintiff "A. B. the above-mentioned Sum of together with "Costs, or else to appear in Person, or by Your Agent, before me, "at the Court House in the City of $\frac{\text{Quebec}}{\text{Montreal}}$ together with your "Witnesses, if you have any, on the Day of "when the matter of Complaint against you as ascertained in "the above Declaration will be heard and finally determined, "otherwise Judgment will be given against you by Default— "E. F. Judge of the Court of Common Pleas."

This Summons shall be signed by one of the Judges of the Court, and a Copy thereof, and of the Declaration, served on the Defendant Personally, or left at his Dwelling House, or Ordinary Place of Residence, with some grown Person there ; and the Person serving the same shall inform the Defendant, or such grown Person, of the Contents thereof. If, at the Time mentioned in the Summons, the Defendant does not appear (Proof of the Service thereof being produced in Court) the Judges, or any one of Them shall hear the cause on the part of the Plaintiff, and make such order, Decree, or Judgment, and award such reasonable Costs of Suit, as to them or him shall appear agreeable to Equity and good Conscience ; but if the Defendant does not appear by himself, or his Agent, and the Plaintiff, or his Agent, does not appear, or appearing does not Prosecute, or prosecuting, fails in his Action, the Judge or Judges shall dismiss the Defendant with Costs. If the Plaintiff makes good his Charge against the Defendant, the Judge or Judges shall give Judgment accordingly, and award Costs and Execution, but the Execution shall not

issue till the next Court Day after Judgment given : the Execution shall go against the Moveables only of the Defendant, which shall be seized by some Person to be for that Purpose appointed by the Court, and sold by him in the manner mentioned in the Sixteenth Article of this Ordinance. But the Execution shall contain an Exception of the Party's Beasts of the Plough, Implements of Husbandry, Tools of his Trade, and one Bed and Bedding, unless his other Goods and Chattels should prove insufficient, in which Case such Beasts of the Plough, Implements of Husbandry and Tools of his Trade, shall be sold, but not the Bed and Bedding. The Judge or Judges, may, if they think proper, order the Debt to be levied by Installments, provided the Time allowed shall not exceed the Space of Three Months from the Day of issuing the Execution.

## Art XXI.

In Matters, as well above as of or under the Value of Ten Pounds Sterling, if the Defendant shall convey away or secrete his Effects, an Execution shall go against his Person, to be taken and detained in Prison until he satisfies the Judgment.

## Art XXII.

For the Satisfaction of all Judgments given in Commercial Matters between Merchants, as well as of all Debts due to Merchants for Goods, Wares, and Merchandizes, by them sold, Execution shall issue not only against the Goods, Chattels, Lands, and Tenements of the Defendant, but also, in case they shall not produce the Amount of the Plaintiff's Demand, against his Person, to be taken and conveyed into the Prison of the District, and there detained until he pays the Amount of the Judgment, or otherwise settles with and satisfies the Plaintiff : Provided, that if the Defendant after remaining one month in Prison, shall make Application to the Court, and make an Affidavit that he is not worth Ten Pounds, the Plaintiff shall pay to the Defendant the Sum of Three Shillings and Sixpence weekly, for his Maintenance as long as he shall be detained in Prison at the Suit of the Plaintiff ; such Payment shall be made in Advance on Monday in every Week, in Failure of which the Court from whence the Execution issued shall order the Defendant to be released ; but the Plaintiff shall not be obliged to make such Payment, if he can prove, to the Satisfaction of the Court by which the Defendant stands committed, that the Defendant has secreted or conveyed away his Effects to defraud his Creditors.

Art XXIII.

When any Person against whom Judgment shall be given in any of the Courts of Common Pleas shall not have sufficient Goods, Chattels, Lands, or Tenements, to satisfy such Judgment within the Jurisdiction of the Court wherein such Judgment shall have been obtained, but shall have Goods, Chattels, Lands or Tenements within the Jurisdiction of the other Court of Common Pleas, it shall be lawful for the Judge or Judges of the Court wherein Judgment shall have been obtained to award Execution to the Sheriff of the other District, who, after getting the Writ indorsed by one of the Judges of the Court for the District in which the Goods, Chattels, Lands, or Tenements are situated, shall execute the same, and make Return thereof to the Court from which it issued ; and such Writ and Return shall be by him sent to the Sheriff of the District from whence the Writ was originally awarded, to be delivered into the Court that issued the same.—The Sheriff executing such Writ shall be answerable for his Doings relative thereto before the Court from which it was originally awarded ; and the Judges of the Court of Common Pleas for the one District may, in like manner, award Execution against the Body of a Person residing in the other, in Cases where such Execution is by Law allowed ; and the Sheriff executing the Writ to him in such case directed shall convey the Body of such Person into the Prison of the District wherein such Person shall be arrested.

Art XXIV.

This Ordinance, and the several Provisions and matters therein contained, shall remain in Force only during the Space of Two Years from the Publication thereof.

GUY CARLETON.

Ordained and Enacted by the Authority aforesaid, and passed in Council under the Great Seal of the Province, at the Council Chamber in the Castle of S$^{t}$ Lewis in the City of Quebec, the Twenty fifth day of February, in the seventeenth year of the Reign of our Sovereign Lord George the Third, by the Grace of God, of Great Britain, France and Ireland, King Defender of the Faith and so forth, and in the Year of our Lord One thousand seven hundred and seventy seven.

By His Excellency's Command

J : WILLIAMS
C.L.C.

# AN ORDINANCE FOR ESTABLISHING COURTS OF CRIMINAL JURISDICTION IN THE PROVINCE OF QUEBEC.[1]

It is Ordained and Enacted by His Excellency the Captain General and Governor in Chief of this Province, by and with the advice and consent of the Legislative Council of the Same, That,

## Art. I.

Establishment of a supreme Court of Criminal Justice,

to be held before the Chief Justice or Commissioners for executing that office.

There shall be, and hereby is erected, constituted and established for the Province at large, a Supreme Court of Criminal Justice and Jurisdiction, to be called and known by the name of the Court of King's Bench, for the Cognizance of all Pleas of the Crown, and for the Trial of all manner of Offences whatsoever ; the said Court shall be held before the Chief Justice of the Province, or Commissioners that may be appointed for executing the Office of Chief Justice for the Time being, who shall hear and determine the said Pleas of the Crown, and of all manner of Offences whatsoever, according to the Laws of England, and the Ordinances of the Government and Legislative Council of the Province.

Four Sessions; Two at Quebec, Two at Montreal.

Times of Sitting.

Special Commissions to be issued if necessary.

And for the Speedy Administration of Justice, and the preventing long Imprisonments, there shall be held, in every Year, Four Sessions of the said Court of King's Bench, whereof Two Sessions shall be held at the City of Quebec, and the other Two at the City of Montreal, at the Times hereafter following, to wit, at the City of Quebec on the First Tuesday of May and the First Tuesday of November, and at the City of Montreal on the First Monday of March and the First Monday of September in every year : but nothing herein contained shall extend to prevent the Governor, Lieutenant Governor, or Commander in Chief for the Time being, to issue Commissions of Oyer and Terminer and Gaol Delivery at any other Time or Times, when he may think it necessary and expedient so to do.

## Art. II.

Establishment of the Court of Quarter Sessions.

In each of the Districts of Quebec and Montreal, there shall be held and kept, Four Times in every Year, a Court of General Quarter Sessions of the Peace, by the Commissioners of the

[1] Canadian Archives, Q 62 A—2, p. 594. A draught of this Ordinance was first read in Council on March 1st and was passed after much discussion on March 4th. Minutes of Leg. Council, Vol. D., pp. 15-17. As may be observed, it ignores entirely the restrictions on some of the worst features of the English Criminal Law which had been introduced in Hey's draught. Thus in his draught, judges were debarred from sentencing any felon to be burned in the hand. See p. 639. We find, however, that this was a standard form of punishment in Canada. Thus in the Public Accounts for the year 1784 we have, as a sample of several similar entries, an item from the Montreal District of the expenditure of £20 5s cy, in payment of the executioner and other expences connected with the punishment of seven persons named, who were sentenced in the previous session of the Court of King's Bench "to be burned in the hand." Public Accounts, Prov. of Quebec, 1784.

Peace of each respective District, or so many of them as are or shall be limited in the Commission of the Peace, who shall hear and determine all matters relative to the Conservation of the Peace, and whatsoever is by them cognizable, according to the Laws of England, and the Ordinances of the Governor and Legislative Council of the Province.

Places and Times of Sitting.

The said Sessions for the District of Quebec, shall be held at the City of Quebec, and the said Sessions for the District of Montreal shall be held at the City of Montreal, on the days hereafter following, to wit, on the second Tuesdays of the Months of January, April, July and October, in every year.

Two Commissioners to sit weekly.

And Two of the said Commissioners of the Peace shall sit weekly in Rotation, in the Cities of Quebec and Montreal, for the better Regulation of the Police, and other matters and Things belonging to their Office ; and the names of the Commissioners who are to sit in each Week shall be posted up on the Door of the Sessions House, by the Clerk of the Peace, Two Days before their respective Sittings.

Art. III.

Captains of Militia impowered in their respective Parishes to act as Coroners.

As the great extent of this Province may render it often impracticable for the Coroner of the District to give his attendance at the different Places where it might be necessary, the Captains of Militia shall be and hereby are impowered, in their respective Parishes, when any marks of Violence appear on any dead Body, to summon together Six respectable Householders of his Parish, to inspect the same ; and he shall, according to their Opinion, report the manner and cause of such Death in writing, to the nearest Commissioner of the Peace, that a further examination may be made therein, if necessary.

Art. IV.

Captains of Militia appointed Peace Officers in their respective Parishes.

And as great Inconveniences might arise from the want of Peace Officers in different parts of the Province, the said Captains of Militia shall be and hereby are impowered to arrest any Person guilty of any Breach of the Peace, or any Criminal offence, within their respective Parishes, and to convey or cause to be conveyed, such Person before the nearest Commissioner of the Peace, to be dealt with according to Law.

(signed)
GUY CARLETON

Ordained and Enacted by the Authority aforesaid, and passed in Council under the Great Seal of the Province at the Council Chamber, in the Castle of S$^{t}$ Lewis, in

the City of Quebec, the Fourth Day of March, in the seventeenth year of the Reign of our Sovereign Lord George the Third, by the Grace of God of Great Britain France and Ireland, King, Defender of the Faith and so forth, and in the Year of Our Lord One thousand seven hundred and seventy seven.

By His Excellency's Command.

J: WILLIAMS
C.L.C.

## PLAN FOR THE ESTABLISHMENT OF A CHAMBER OF COMMERCE FOR THE CITY & DISTRICT OF QUEBEC.[1]

Art. 1st

The chamber of commerce to be composed of all the merchants and traders in this city & district, willing to become members thereof, french & english without distinction.

Art. 2nd

Every member of the chamber of commerce shall pay on his admission the sum of eight spanish dollars towards the support thereof, and continue to pay yearly, so long as he may chuse to remain a member, his proportion of what may be thought sufficient, by a majority of the subscribers, to defray the annual expences of the chamber.

Art. 3rd

Twenty five directors, including a president, vice-president, treasurer, and clerk, shall be elected, without delay, by a majority of the subscribers ; and they shall be deemed a full board for the space of one year, and any five or more of the directors, but not less, shall have power to sit and do business.

[1] Enclosed in the despatch of May 9th. Canadian Archives, Q 13, p. 99. The object of this plan was to avoid bringing commercial matters into the regular courts where, under the Quebec Act, the French and not the English civil law was made the basis of decision. On the occasion of the final reading of the Ordinance to regulate the proceedings in the Courts of Civil Judicature, Mr. Harrison had moved the following amendment to the 7th article "And the judges are hereby directed to determine upon the evidence, both as to the Law and the Fact, agreeable to the Laws and Customs of England; and that in all actions above the value of £10 sterling, Juries shall be allowed, at the option of either of the parties." Minutes of Leg. Council, vol. D., p. 13. This, however, was defeated by 7 to 5. At the following meeting of the Council, on February 25th, the five members of the minority, Messrs. Finlay, Dunn, Harrison, Allsopp, and Johnson, were appointed a committee "To prepare a scheme or plan of such rules and regulations as may be proper for an establishment of a chamber of commerce, to be laid before His Excellency in council; and that, for that purpose, they meet and confer with such of the english and canadian merchants of the province, as they shall think proper." Ibid. p. 14. On March 29th, there was presented and read the report of the committee on the proposed Chamber of Commerce. Copies of this were to be made for the Governor and the various members of the Council. On the same day the Governor closed the session of Council, and officially nothing more was heard of the plan, until the Report of 1787.

SESSIONAL PAPER No. 18

Art. 4th

At the expiration of every year, the same number of directors shall be chosen, in the same manner, from the list of subscribers, for an equal space of time, so that all the members may serve in their turn, if elected by the majority.

Art. 5th

The directors of the chamber of commerce, so established, to be a board of arbitrators, authorised to decide, to the best of their knowledge and judgment, all commercial matters, in controversy, that may be brought before them, by mutual consent of parties ; the award of a majority of five or more sitting directors, on any point in dispute, when made in writing, within a limited time, to be final in all matters not exceeding £50. hfx currency; but when the same shall exceed that sum, either of the contending parties shall have liberty to appeal to a full board, every member whereof shall be summoned for that purpose; and the said full board shall not consist of less than a majority of the whole twenty five directors, and the decision of the said full board, or the major part thereof, shall be final, without appeal.

Art. 6th

The directors of the chamber of commerce for the time being, may frame, to the best of their judgments, rules and regulations for the general benefit of trade ; subject nevertheless to the concurrence, or disapprobation of the whole body of members, at meetings to be held every three months, or oftener if necessary, and such rules and regulations, when approved of by a majority of subscribers, and requiring the sanction of law, shall be laid before the legislature of the province for the time being, for their consideration, and, if by them also approved of, prayed for, in order to be past into a law.

Art. 7th

The chamber of commerce to be made a body corporate, capable of suing and of being sued in any court of record in this province, to hold funds, to receive donations and endowments, and to give premiums for the encouragement of trade and agriculture.

Art. 8th

The majority of the subscribers to the chamber, to have power to form rules and bye-laws for the better government, and good order of the members, consistent nevertheless with the laws of the province ; and to keep books wherein shall be recorded the proceedings of the chamber at large.

Art. 9th

The corporation to have power to publish any rules and regulations not requiring the sanction of law, which they may make from time to time, by virtue of their charter, for the benefit of trade, in order that the same may be publickly known throughout the province.

Council Office
3rd April 1777

a copy.
J. WILLIAMS.

## PETITION OF MERCHANTS FOR REPEAL OF QUEBEC ACT.[1]

To The Right Honorable Lord George Germain, One of His Majesty's Principal Secretaries of State, &c &c &c

The Petition of the Merchants & such Inhabitants of the Province of Quebec as are at present in London — Sheweth,

That his Majesty's British subjects in that extensive Colony apprehending the inconveniences which have since really arisen from the operation of an act of Parliament passed in the Year 1774 for establishing the Government of the Province of Quebec, did in the same year Petition his Majesty, and both Houses of Parliament, that it might be repealed or at least amended.[2]

We beg leave to inform your Lordship, that from the reduction of Canada till May 1775 when the above mentioned act took place, the inhabitants as well Canadians as English lived with great satisfaction in the enjoyment of their liberty and Property under the Protection of the English Government, and that they received the new regulations contained in the act with surprize, and reluctance ; for they saw themselves at once deprived of that inestimable priviledge of the English constitution, that grand Bulwark against Injustice and Oppression, the trial by Juries, and of the benefit of the Commercial Laws of England, so wisely calculated to promote a spirit of Trade and Industry and so generally known and understood ; instead of which they found themselves obliged to have recourse to the Laws of Canada scarcely, if at all, understood by any Person in the Province, and consisting chiefly of occasional Mandates issued, from time to time, by the French Governors. In consequence of this subjection to the arbitrary command of their superiors, many of the Canadians have been ordered out upon the public Service, without any pay or emolument whatever, and upon refusal have been thrown into prison under a Military Guard.[3] It cannot be wondered at if under such circumstances, Discontents, and even Dissatisfaction to his Majesty's Government should have crept in.

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[1] Canadian Archives, Haldimand Papers, B 43, p. 13.
[2] Referring to the petitions of Nov. 12th, 1774, See pp. 589-592.
[3] Referring to the restoration of the French feudal system under the Quebec Act, and the consequent exaction of corvées and other compulsory services. See notes 1 and 2, p. 677. See also Burgoyne to Carleton, as to enforcing corvées; Q 13, p. 212. See also Finlay's Motion in Council on the complaints of the peasants, Minutes of Leg. Council, Vol. D., p. 41.

The ordinances lately made by the Governor and Council, in aid of the French Law, have contributed to increase the General dissatisfaction. This Council, when only twelve members were present,[1] and each of them bound by an Oath of Secrecy, proceeded to make laws without requiring the least Information, and with the most Total disregard of an Application from the Merchants who peti[ti]oned, upon Grounds of general utility, that they might not be deprived of the Mercantile Laws of England.[2]

The Ordinances furnish further matter of Complaint because of the ambiguous terms in which they are expressed, of the indefinite Power which they give to the Judges, and of the Prejudice which prevails in them, without exception, in favor of the Laws of Canada, whose forms are tedious, expensive and unnecessary. In particular the ordinance regulating the Indian Trade,[3] without yielding any revenue or advantage whatever to Government, subjects the Trader to insuperable Difficulties, for the pass he obtains is upon Conditions frequently out of his Power to comply with, and his whole Property is in consequence liable to confiscation, by the civil or seizure by the military power, upon an information laid against him by any person tempted by a prospect of the reward. Nor though the information be false, is there any provision to redress the Trader, though he may be equally ruined by the Expence, and the delay of his Journey in the proper Season. These difficulties are so alarming that though this Trade is by far the most considerable in the Province since the commencement of the Present Rebellion, whenever the communication from Albany shall be open a great part of it will be carried on from the Province of New York, notwithstanding the situation of Canada be in all respects more convenient.

We beg leave to assure your Lordship that these causes originating chiefly from the Quebec act, have concurred to spread a general discontent throughout the Province, without any advantage to the present state, and so far as to alienate the affections of his Majesties subjects as to give great reason to apprehend a disposition in them to change their present form of Government, should such an Opportunity unhappily offer.

We therefore humbly entreat your Lordship to take into your consideration the dangerous, and confused situation of this Colony, and grant us your Patronage and assistance in endeavouring to obtain a repeal of the Quebec Act, the Source of these grievances and an Establishment, in its stead, of a free Government by an assembly or Representation of the People, agreable to His Majesty's Royal Promise contained in the Proclamation made in the year 1763. This measure alone, which we are firmly persuaded

[1] Four members of the Council had been captured and were prisoners in the colonies. See Q 12, p. 172. Some of the others were absent, and one or two had died. In Carleton's letter to Germain, of June 27th, 1777, he stated that, having found a sufficient number of Councillors in the Province to proceed upon the business of legislation, he had not nominated any others.

[2] See note to Plan for a Chamber of Commerce p. 692.

[3] Being No. 7 in the list given on p. 678. This is given in full in "Ordinances made and passed by the Governor and Legislative Council of the Province of Quebec. And now in Force in the Province of Lower Canada. Quebec, 1795." p. 9. Also given in the recently reprinted Ordinances by the Public Archives, 1917, p. 65. The portion more particularly complained of is section V, which required every trader among the western Indians to have a pass, in default of which he is subject to a penalty of £50. Conviction may be secured on the testimony of one credible witness, other than the informer who is to receive one-half the penalty.

is founded equally on the Principles of Justice and good Policy is adapted to conciliate the minds of a dissatisfied People, to confirm their wavering Disposition, and to restore that mutual confidence between the Governors and the Governed which is essentially necessary to the happiness of both.

(signed)

London 2 April 1778.

| | | |
|---|---|---|
| W^m Smith | W^m Lindsay | Chas Grant |
| Josiah Blackley | Jno Shannan | Alex^r Davidson |
| John Macdonald | Edwards Watts | Adam Lymburner |
| William Grant | Dan^l Sutherland | Tho^s Aylwin |
| W^m Aird | Charles Paterson | John Salmon |
| Isaac Todd | James Finlay | John Paterson |
| William Shaw | Allan Paterson | Jean H. D. Hemair |
| | Alex^r Fraser | Rob^t M. M^cWilliams |
| | | John Pagan |
| | | Randle Meredith |

## INSTRUCTIONS TO GOVERNOR HALDIMAND.[1]

(L.S.) George R.

Instructions to Our Trusty and Welbeloved Frederick Haldimand Esquire, Our Captain General & Governor in Chief in & over Our Province of Quebec in America, & of all Our Territories dependant thereupon, Given at Our Court at S^t James's the Fifteenth day of April 1778. In the Eighteenth Year of Our Reign.—

First. With these Our Instructions You will receive Our Commission under Our Great Seal of Great Britain, constituting you Our Captain General & Governor in Chief in and over Our Province of Quebec in America, & all Our Territories thereunto belonging, bounded & described, as in Our said Commission is set forth ; in Execution therefore of the Trust We have

[1] Canadian Archives, Q 26 B, p. 213. For some time there had been an obvious lack of harmony between Germain and Carleton, but when Burgoyne was selected instead of Carleton to conduct the expedition to Albany, the latter's indignation knew no bounds and his despatches to his chief, the Colonial Secretary, became anything but respectful. Thus, though Carleton was in favour at Court, it was decided to remove him. The King, in writing to Lord North and referring to a subsequent appointment for Carleton says, "Carleton was wrong in permitting his Pen to convey such asperity to a Sec^y of State, and therefore has been removed from the Gov^t of Canada. But his meretorious defence of Quebec made him a proper object of military reward, and as such I c^d not provide for any o^er Gen^l till I paid the Debt his services had a right to claim." Brougham's "Statesmen of the Time of George III," p. 107. It was not, however, so easy to find a suitable successor for Carleton. On Feb. 24th, 1777, the King writes to North,—"L^d G. G. will tomorrow propose Clinton for Canada," ibid., p. 97. This proposal however was not realized. Meantime Carleton, in his correspondence with Germain, had thrown off all restraint and was openly insulting. On the 27th of June, 1777, he expressed the hope that he might be permitted to return to Britain that autumn. Burgoyne, fearing that he might be selected to follow Carleton at Quebec, in a letter to Germain, on July 30th, begs most respectfully to decline the possibility of the appointment. He in turn recommends Phillips, one of the British generals associated with him on the expedition, but is doubtful of his willingness to accept. Ultimately, Haldimand, who was then Inspector General of the forces in the West Indies, was selected for the Quebec Governorship, and informed of the fact in August. He was unable to reach Quebec before June 30, 1778, during which time Carleton retained his position. Haldimand was a Swiss soldier of fortune in the British service. He had been employed in the war for the conquest of Canada, and was in command for a time at Three Rivers and Montreal, hence he knew something of the country and its problems.

reposed in you, You are to take on You the Administration of the Government, & to do & execute all things belonging to your Command, according to the several Powers & Authorities of Our said Commission & these Our Instructions to you, or according to such further Powers & Instructions as you shall at any time hereafter receive under Our Signet or Sign Manual, or by Our Order in Our Privy Council ; and you are to call together at Quebec (which We do hereby appoint to be the Place of your ordinary Residence, & the Principal Seat of Government) the following Persons, whom We do hereby constitute & appoint to be Our Council for the Affairs of Our said Province & the Territories thereunto belonging, Viz[t] Hector Theophilus Cramahé Esq[r] Our Lieutenant Governor of Our said Province, or Our Lieutenant Governor of Our said Province for the time being, Peter Livius Esq[r] Our Chief Justice of Our said Province, or Our Chief Justice of Our said Province for the time being, Hugh Finlay, Thomas Dunn, James Cuthbert, Francis L'Evesque, Edward Harrison, John Collins, Adam Mabane, Chaussegros de Lery, George Pownall Esq[r] Our Secretary of Our said Province, or Our Secretary of Our said Province for the time being, George Alsopp, La Corne S[t] Luc, Alexander Johnston, Conrad Gugy, Picotté de Belestres, John Fraser, Henry Caldwell, John Drummond, William Grant, Rocque S[t] Ours Junior, Francis Baby, &
De Longueuil Esq[rs][1] every one of which respectively shall enjoy his Office of Councillor aforesaid for & during Our Will and Pleasure, & his Residence within Our said Province of Quebec, & not otherwise.—

(The following sections of the Instructions to Haldimand are identical with the General Instructions to Carleton of 3[d] Jan[y], 1775—omitting the latter part of section 9 as shown[2]—and adding section 16, as follows.)

16. And Whereas, in pursuance of the foregoing Instructions, Ordinances have been framed and ordained for the Establishment of Courts, and directing a proper mode of Administring Civil and Criminal Justice within Our said Province of Quebec, conformable to the Spirit and Intention of the aforesaid Act of Parliament, Intituled, "An Act for making more Effectual "Provision for the Government of the Province of Quebec in North America," It is Our Will and Pleasure that you do from time to time, with Our said Council in their Legislative Capacities, deliberate upon, and frame such Ordinances, as the Circumstances and Condition of Affairs may require, either for continuing, Amending or enforcing such Ordinances, as have been Ordained, as aforesaid, or making any further and necessary Changes and Regulations in the Courts as established, or in the mode of administering Justice within Our said Province ; provided, that such Ordinances be strictly conformable to the Act of Parliament aforesaid, And to the Tenor of these Our Instructions.

Endorsed : Frederick Haldimand Esq[r] Governor of Quebec Dated 15[th] April 1777. (1778).

The Usual Trade Instructions[3] were signed & dated as above.

[1] By comparing this list with the corresponding one in Carleton's Instructions in 1775 (see p. 595) the number of changes which had taken place in the Council may be ascertained.

[2] See p. 597.

[3] See p. 620.

## CARLETON'S DISMISSAL OF CHIEF JUSTICE LIVIUS.[1]

Whitehall, March 2nd 1779.

To the King's Most Excellent Majesty.
May it please Your Majesty,

In obedience to your Majesty's Commands, we have taken into our consideration the humble Memorial of Peter Livius Esqr. appointed by your Majesty to be Chief Justice of the Province of Quebec, complaining of his having been amoved from his said office by order of Sir Guy Carleton, Knight of the Bath, late your Majesty's Governor of that Province, without assigning any cause, and without authority for so doing; and praying, that Sir Guy Carleton may be now required to assign the reasons for his Amoval; and that the same may be enquired into;[2] we have thereupon, in pursuance of our duty, required of Sir Guy Carleton a communication of the reasons, which induced him to displace Mr Livius;[3] and having received for answer, that he had stated those reasons in one of his last Letters[4] to Lord George Germain, one of your Majesty's principal Secretaries of State, and had referred his Lordship for proof of the necessity of the measure to the Minutes of the legislative Council in their last Session, we have examined those Minutes,[5] together with the Letter referred to by Sir Guy Carleton, (Copy of which has been communicated to us by Lord George Germain;) and having made known to Mr Livius the matter in Charge against him we did appoint a day for hearing him in his defence, and gave notice thereof to Sir Guy Carleton, that he might attend, and make good his reasons assigned for the said Amoval; but he submitting, whether his attendance might be necessary as his charge was confined to the papers then before us,[6] we proceeded on the day appointed to hear and consider, what Mr Livius had to offer in his Justification and defence, and now beg leave humbly to represent to your Majesty,

That, before we proceed to examine the papers, to which we are referred for proofs of Mr Livius's misconduct, we think it necessary to premise, that no part of the Charges contained in those Papers apply to impeach

[1] Canadian Archives, Q. 18 B, p. 131. Peter Livius had been a member of Council in New Hampshire for some years previous to 1775. See Acts of Privy Council, Colonial Series 1766–83, p. 569. In the spring of that year he was appointed by Dartmouth one of the judges of the District of Montreal, and Judge of the Vice Admiralty Court, much to the annoyance of Carleton. See Q. 12, p. 119. On the 22nd August, 1776, Germain announced to Carleton "Mr. Hey not chusing to return to Quebec, His Majesty has been pleased to promote Mr. Livius to the Office of Chief Justice of the Province, in his room." Q 12, p. 92. On 9th July, 1777, he took the oath of office as councillor and member of the Court of Appeals. Minutes of Privy Council, Quebec, Vol. D., p. 14. On the opening of the Legislative Session, 1778, on March 23rd, he took his seat. At that time Carleton was under recall, and in bitter hostility to Germain. Meantime his enmity to Livius had not been lessened by the promotion of the latter, through Germain, to the position of Chief Justice. Such was the personal factor behind the discussion of Constitutional issues.

[2] On May 9th, Livius wrote to Germain, giving a full report to the Minister, accompanied by the documents, setting forth his version of the conditions which led up to his dismissal, and praying for an investigation of the case. A copy of this was again sent on July 9th. C.O. 42, vol. 9, p. 69. This letter was the copy received by the Minister and submitted to the Privy Council, and by them to the Committee of Council for Plantation Affairs.

[3] Canadian Archives, Q. 18 B., p. 125.

[4] See Carleton to Germain, 25th June, 1778. B. 37, p. 191.

[5] Minutes of Leg. Council, Quebec, vol. D.

[6] See C.O. 42, vol. 9, p. 101.

the Chief Justice in his judicial Character and Capacity in any particular; and it is our Duty here to observe, that your Majesty by the Seventeenth Article of your Instructions to the Governor of Quebec,[1] was graciously pleased to direct, that he should not displace any of the Judges, Justices of the Peace, or other officers or Ministers without good and sufficient cause, which he was to signify in the fullest and most distinct manner to your Majesty by one of your Majesty's principal Secretaries of State, and to your Majesty's Commissioners for Trade and Plantations, for their information, we shall now proceed to examine his conduct, as one of the legislative Council; and beg leave thereupon to observe to your Majesty,

That it does appear to us, that Your Majesty's Council of Quebec were called together by the late Governor for the purposes of Legislation on the 23rd of March last, and were prorogued by his order on the 25th of April following; that this was the first and only session of the legislative Council at which the Chief Justice was present; and that during the period of this Session he constantly attended; That upon the first day of the meeting, the late governor being present, recommended to the consideration of the Council the regulation of Fees to be taken in the several offices; and that upon the day following they resolved themselves into two Committees for the purpose of making the necessary examinations and reports preparatory to the framing an Ordinance the Chief Justice being Chairman of the Committee for Law Fees; that upon this occasion it appears on the Minutes, that the Chief Justice moved in the following words, viz.

"That in Order to regulate the fees in Compliance with his Excellency "the Governor's Recommendation, the Judges of the Courts of Common "Pleas for the Districts of Quebec and Montreal, might be directed to furn- "ish a State of the Course of proceeding in their respective Courts, and of "such Rules, Orders and Notices of practice as they have made to regulate "the Course of their respective Courts, in order that this board may re- "ceive the Information necessary to apportion justly the fees to be allowed "to the Labour necessary to be done."[2]

This motion being rejected upon a Division, the Committe proceeded on their Business; but before they were prepared to make their Report, it appears, that Mr Finley, joint Post Master of America, and Mr Grant, acting Receiver General, each moved certain regulations for the better managing and collecting your Majesty's Revenue within their respective Departments; That the Chief Justice voted for referring these to a Committee in both instances, which were over ruled; and the reasons he assigns for so doing are, because these propositions were offered by those, to whom your Majesty had committed the care of the matters, to which they referred, and because it was, as he conceives a breach of decency in the proceedings to refuse them the common attention of being considered by a Committee.

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[1] See Instructions to Carleton 1775, p. 602.
[2] Minutes of Leg. Council, vol. D., p. 26.

When we state these proceedings to your Majesty, we would not wish to convey any Idea, that it is upon them the late Governor founds his reasons for displacing the Chief Justice, especially as your Majesty had, in the eighth Article of your Royal Instructions to your Governor signified your express Will and Pleasure, that he should permit to all the members of the Council to have and enjoy freedom of debate and vote in all Affairs of public concern, that might be debated in Council; [1] but we lay these Facts before your Majesty simply, as they stand upon the Minutes, to which we are referred, that no particular of the proceedings, wherein the Chief Justice dissented from the prevailing Sense of the Council may be withheld from view on this examination; at the same time also, that we state these instances, in which the Chief Justice divided against the Majority of the Council, we must in Justice observe, that in the case of certain propositions, as the foundation of an Ordinance moved for by M^r Caldwell, one of the said Council, and rejected by a Majority, it is stated by M^r Livius, that he took part in the rejection of those Motions, and the Ordinance thereupon dependent. We proceed now to consider, what we must believe to have been the especial Cause of M^r Livius's removal; the two following motions made and proposed by him in Council, the first of which we find in the Minutes of the 8^th of April in the following words, viz.

"The Chief Justice moved That this board not having hitherto had "Communication of his Majesty's Instructions for making and passing "Laws in this province, His Excellency the Governor be humbly requested "to communicate to this board, such royal Instructions as he may have "received, relative to the Legislation of this province, and he may think "are proper to be disclosed to us; In order that this legislative Council may "dutifully endeavour to conform themselves to his Majesty's Intentions, "and that they may so far as they are able, carry into Effect his Majesty's "most gracious purposes for the good Government of his Subjects in this "province."[2]

This Motion conveyed in words, to which no exception seems to lye, is in effect a Call upon the governor to comply with Your Majesty's commands, by imparting to the Council such and so many of your Majesty's Royal Instructions, as he may have been directed to communicate, or may find convenient so to do; and it is our duty on this occasion to observe, that, if none of your Majesty's said Instructions had at that time been laid before the Council Board, the Motion appears fully warranted by the 7^th Article of your Majesty's said Royal Instructions, by which Article your said Governor is directed forthwith to communicate such and so many of those your Majesty's Instructions to your said Council, wherein their advice and consent are mentioned to be requisite, as likewise all such others from time to time as he should find convenient for your Majesty's Service to

[1] See Instructions to Carleton, 1775, p. 597.
[2] Minutes of Leg. Council, vol. D., p. 35.

be imparted to them: By a Communication of these Instructions, particularly the 10th, 11th, 12th and 13th your Majesty's Gracious ends and designs in the constitution proposed for the Province of Quebec, and the effectual Security to personal liberty, held forth to all men under the Common Law of this Realm, would have been fully manifested; neither do we see how the said Council, empowered as they are by Act of Parliament to all purposes of Legislation jointly with the Governor, could, without this communication be so well instructed either in their own duty, or in your Majesty's gracious Will and Pleasure, as to what might be fitting to be provided for by Law within the Province agreeable to the Act of Parliament, intituled, "An "Act for making more effectual provision for the government of the Province "of Quebec in North America."

Wherefore lest your Majesty's present Governor should not in due time advert to this part of his duty; and lest a constitution, calculated to promote the welfare and happiness of your Majesty's Subjects there, and adapted to the peculiar circumstances of that province, should be mistaken or withheld, we are humbly of opinion, that it should be given in Instruction to the governor forthwith to comply with your Majesty's Royal Will and Pleasure signified in the Seventh Article of your Majesty's Instructions above recited, by communicating to the Council such and so many of your Majesty's Instructions, wherein their Advice and consent are made requisite, with such others from time to time, as he should judge for your Majesty's Service to be imparted.[1]

We come now to consider the Motion made by the Chief Justice on the 23d day of April, being the Meeting of Council immediately antecedent to their prorogation, and this Motion stands on the Journal in the following words, viz.

"That Whereas by an Act of Parliament for the making more effectual Provision for the Government of this province, passed in the 14th Year of his present Majesty, It is enacted, That it should be lawful for his Majesty his Heirs or Successors in Manner as therein expressed, to constitute and appoint a Council for the Affairs of the province of Quebec to consist of persons resident there, not exceeding twenty three, nor less than seventeen; That His Excellency The Governor was pleased by an Order of the 8th August 1776 to appoint a Council (calling the same a privy Council) to consist only of five particular persons, in the said Order named, and of such others as the Lieutenant Governor should think proper to send for."

"That by Virtue of the said Order, the five persons in the said Order named repeatedly, in different Affairs of different Natures, have taken upon themselves to act as a Council for the Affairs of the province of Quebec, in Opposition to the said Act of Parliament, and in Exclusion of his Majesty's Council for the Affairs of the province of Quebec, legally constituted and appointed according to the said Act."

[1] The additional Instruction here recommended was duly issued 29th March, 1779, see p. 705.

"That the Accounts of the Expenditures of all the public Monies for the Use of this province have been examined only by these five persons, or such others as the Lieutenant Governor chose to send for, and afterwards have been reported by them to the Governor, and by him approved, in the presence indeed of the legal Council but without their Interference, Approbation or Consent."

"That the said Approbation of the Governor in the presence of the legal Council, by some Accident has been entered in the Journals, in Words, that may naturally be understood to mean that the said Accounts have received the Approbation and Sanction of his Majesty's legal Council for the Affairs of this province."

"That these Proceedings are irregular and illegal, tend to introduce Confusion, Uncertainty and Discontent; And if not timely remedied, will give Opportunity and Means of Collusion, and Impunity to future speculation, and perversion of public Money, under any future Governor."

"The Chief Justice therefore moved that an humble address be prepared and presented to His Excellency the Governor, stating the premisses and humbly praying that he will be pleased to order convenient Remedy."[1]

This Motion, though consisting of several Clauses, strikes us, as containing an assertion, which it behoves us in the first place to examine into, and consider.

The Fact asserted by this Motion, is that your Majesty's then Governor was pleased, by order of the 8th day of August 1776, to appoint a Council (calling the same a Privy Council,) to consist only of five particular persons in the said Order named, and of such others, as the Lieutenant Governor should think proper to send for; and the Motion goes on to say, that the five persons, so named, have proceeded to act to the exclusion of your Majesty's Council legally constituted, in opposition to the Act of Parliament above mentioned.

The numbers of your Majesty's Council ascertained by this Act of Parliament to which the Motion refers, are to consist of not less than seventeen, nor more than twenty three members, and of this Council not less than a Majority are to cooperate with the governor in all Acts of Legislation, thus the Regulation stood under the Act of Parliament, when your Majesty judging it probable, that occasions might arise, when the Advice and Consent of the Council might be wanted in other matters, besides Acts of Legislation, when a Majority of the whole could not conveniently be assembled was pleased to direct, (and it stands as the second Article in your Majesty's Royal Instructions to your late Governor) "that "any five of the said Council should constitute a Board of Council for trans-"acting all Business, in which their Advice and consent may be requisite, "Acts of Legislature only excepted, in which he is not to act without a "Majority of the whole."[2]

[1] Minutes of Leg. Council, vol. D., p. 40.
[2] See Instructions to Carleton, 1775, p. 595.

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By this Instruction it appears, that the Governor is impowered to proceed upon Business (Acts of Legislation only excepted) with a Board of five Councillors, if more do not attend his Summons; but it does not, as we conceive, delegate Authority to him to select and appoint any such persons by name, as he shall think fit to make a Quorum or extend to excuse him from calling into Council all such thereunto belonging, as are within convenient distance from the place of meeting.

In this sense of your Majesty's Instruction we humbly recommend it to your Majesty to direct a second additional Instruction to your Governor, which by enjoyning a discontinuance of the mode, hitherto pursued, of nominating and appointing what has been termed a Privy Council, may, by an explanation of the second Article of your Majesty's General Instructions, confirm to the Council at large the Trusts, Powers, & Privileges intended to be repared & vested in them by your Majesty's said General Instructions.[1]

This being submitted, it is our duty to lay before your Majesty the proceeding, to which the Chief Justice's Motion refers; and we find in the Minutes of Council of the 8th of August 1776, that the Governor, with the Lieut. Governor, Hugh Finlay, Thomas Dunn, John Collins, and Adam Mabane, being the only Members present, appointed the said five Members a Board of Privy Council, and ordered "That they examine & report upon "the provincial accounts down to the first of May last, the Military contin- "gent Accounts for the defence of the Province to the time of discharging "the Militia of the City of Quebec; the Indian Contingent Accounts, in- "cluding the Bills drawn at Oswegatche, Niagara, Detroit, and Michili- "mackinac, and all other accounts, which may be laid before them by his "Excellency's Orders."

"That they inquire into the State of the Province with regard to the "Provisions both in wheat and live stock, which it is capable of furnishing "to His Majesty's Troops over and above the consumption of the Inhabit- "ants and that they forthwith give their opinion to his Excellency upon the "propriety of stopping the Exportation of those articles.

"That they take into consideration the Fees of the different Offices, & "of the Attornies of the different Courts of Justice in the Province and "cause a List thereof to be made out, and laid before his Excellency.

"That they also take into consideration the regulations of the Police "of the Province, and cause commissions to be prepared for constituting "an inferior criminal Jurisdiction in the respective Districts of Quebec "and Montreal."

"That the Lieutenant Governor may cause any other member or mem- "bers of the Council to be summoned to assist at the Board, whenever he "shall think it necessary to consider of any matters regarding the "tranquillity and good Order of the Province."[2]

[1] The additional Instruction here recommended was duly issued 29th March, 1779, and follows this document. See p. 704.

[2] Minutes of Privy Council, Quebec, vol. D., p. 1.

Having thus at large recited the Minute to which the Motion refers, the whole of Mr Livius's conduct in Council is before Your Majesty, and submitted to your Royal Wisdom; but your Majesty having been pleased to require our Opinion in the Case, it is our duty to say, that, altho' it were much to be wished, that the last of the above recited Motions had been propounded in terms more studiously guarded, and to appearance not so offensive to the Governor; yet upon a full Review of these proceedings, without entering into any discussion of the Authority assumed by the Governor in the mode of removal, there does not appear to us good and sufficient cause for displacing Mr Livius; especially when we consider, what has been before observed, that no complaint or imputation whatever has been prefer'd against him in his Judicial Capacity.[1]

Which is most humbly submitted,

Soame Jenyns,
Bamber Gascoyne,
William Jolliffe,
C. F. Greville,
Thomas de Grey, Junr
Robt. Spencer.

Whitehall,
March 2d 1779.

[L.S.]

C.O. (Quebec 1768-1787 Vol. 1.)

George R

Additional Instruction to Our Trusty & Welbeloved Frederick Haldimand Esqr Our Captain General and Governor in Chief in & over Our Province of Quebec in America, & of all Our Territories dependent thereupon.—Given at Our Court at St James's the Twenty Ninth day of March 1779. In the Nineteenth Year of Our Reign.[2]

Whereas by the Second Article[3] of Our Instructions to You the Governor of Our Province of Quebec, We have thought fit to direct that any five of the Members of Our Council for that Province shall constitute a Board of Council for transacting all Business, in which their Advice & Consent may be requisite, Acts of Legislature only excepted, in which case you are not to act without a Majority of the whole. And Whereas it is highly fitting & expedient that no misrepresentation of Our Royal Will & Pleasure in this Instance should continue or obtain, We do hereby direct & require that this Article shall not be understood to delegate Authority to you Our Governor to select & appoint any such Persons by Name as you shall think fit to make

[1]. On July 19th, 1779, Germain sent to Haldimand, a mandamus to re-appoint Peter Livius, Chief Justice of the Province of Quebec. Q 16–1, p. 62. See also Germain to Haldimand, B 43, p. 63.

[2] This is one of the additional instructions recommended in the previous document, see p. 703.

[3] See 2nd article of Carleton's Instructions, 1775, p. 594, and which remained unchanged for Haldimand.

such Quorum, terming the same a Privy Council, or to excuse you from summoning to Council all such thereunto belonging as are within a convenient distance.—On the contrary that you do take especial Care to preserve the Constitution of Our said Province free from Innovation in this respect, to which intent you shall communicate this Our Royal Will & Pleasure to our said Council, that so the Trusts, Powers & Privileges which We have thought fit to vest in them by Our General Instructions may by this express Signification of Our Purpose, be in future ascertained & confirmed.

G. R.

C.O. (Quebec 1768-1787 Vol. 1.)

George R.

(L.S.)

Additional Instruction to Our Trusty & Well beloved Frederick Haldimand Esquire Our Captain General & Governor in Chief in and over Our Province of Quebec in America, and of all our Territories dependent thereupon. Given at our Court at S$^{t}$ James's the Twenty Ninth day of March 1779 In the Nineteenth Year of Our Reign.[1]

Whereas it is fitting, and Our Royal Purpose, that Our Council for the Province of Quebec under your Government, should be fully informed of Our Gracious Intentions in the Constitution proposed for Our said Province, to the end, that they may jointly with You Our Governor and agreably to the Powers vested in them by Act of Parliament carry Our said Intentions effectually into execution to the benefit of Our Service, & to the ease and security of all Our Subjects, Inhabitants of the said Province. It is Our Will & Pleasure and you are hereby strictly directed and required if you shall not have carried Our Royal Instructions for that purpose given already, into effect ; upon receipt hereof, by the first opportunity & without delay, to communicate to Our said Council, such and so many of Our said Instructions wherein their Advice and Consent are made requisite, with such others from time to time, as you shall judge for Our Service to be imparted to them.[2]

G. R.

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[1] This Additional Instruction was also recommended by the Committee of Council in their review of the Livius case. See p. 701.

[2] Haldimand, who had adopted Carleton's policy, naturally did not relish the Instructions received, and in a despatch to Germain of 14th Sept., 1779, marked "Secret and confidential," after referring to other matters, he takes up the question of the additional Instructions: "From the State of the Province herein exhibited, your Lordship will please to consider, whether, consistently with the King's Service, the additional Instructions sent over this Spring, ought positively to be attended to, and followed, whether every Measure of Government ought to be exposed, and laid open to that mixture of People which compose our Council, and whether it is not more probable that the generality of its members will rather incline to the particular and concealed Interests, to which they lean, or which is more probable, be biassed by what they conceive to be their private and particular Interest, than act upon Just and liberal Motives for the good of the State in general." Q 16-2, p. 591. See also Q 16-2, p. 616. He therefore withheld the two Instructions of March 29th and continued his previous course. When these facts, including Haldimand's explanations, were laid before the Board of Trade they passed judgment upon his conduct. See p. 722.

C.O. (Quebec 1768-1787 Vol. 1.)

George R.

[L.S.]

Additional Instruction to Our Trusty and Welbeloved Frederick Haldimand Esquire, Our Captain General and Governor in Chief in and over Our Province of Quebec in America, or to the Commander in Chief of Our said Province for the Time being. Given at Our Court at S$^{t}$ James's the Sixteenth day of July 1779. In the Nineteenth year of Our Reign.

Whereas it is expedient and agreeable to Our Royal Will and Pleasure that Our Subjects Inhabitants of Our Province of Quebec, under your Government, should have, and enjoy every Benefit and Security resulting to them from a speedy and effectual Distribution of Law and Justice, according to the principles of the British Constitution, as far as the same can be adapted to their peculiar Circumstances and Situation. And Whereas according to the practice of the Courts of Civil and Criminal Judicature, as constituted by the Ordinances now in force, the Official Duty of the Chief Justice of Our said Province is confined to Causes of a Criminal Nature only except in Cases of Appeal, where he sits in common with the rest of Our Council. In Consideration hereof, and to prevent (as far as in Us lies) the Frequency of Appeals, It is Our Will and Pleasure and you are hereby strictly enjoined and required, by and with the Advice and Consent of Our Council in their Legislative Capacity assembled to frame an Ordinance to be passed for the purpose of explaining and amending the Ordinances before mentioned by directing and enacting that the Chief Justice shall preside and be made a Member of the Court of Common Pleas, and as such shall sit in the said Court four times in the year at Quebec, & twice in the year at Montreal, at the latter place immediately after, or before the present Circuit Business, as shall be deemed most convenient, that notwithstanding his having given his Opinion in the Court below he shall sit and give his Opinion in the Court of Appeal, that such Court of Appeal shall consist of four persons besides the Chief Justice to be nominated by the Governor or Commander in Chief for the time being from among the Members of Our Council, and approved and confirmed by Us, together with the Judges of the Court of that District from whence the Appeal does not come, the Lieutenant Governor of Our Province not to be one ; That of these persons five to be a Quorum for the Dispatch of Business, the Chief Justice or the Person or one of the Persons officiating in that Capacity always to be one ; And that the said Court of Appeal be confined to examine Errors of Law only taking the Facts, as stated in the Transcript transmitted by the Court where such Cause shall have been determined, & without going into New Evidence, or re-examining the Evidence before taken.[1]

G. R.

[1] A memorandum drawn up by Mr. Livius, without date but evidently while he was in Britain, proposed an amendment to the judicial system of the Province: "In order that impartial & Substantial Justice may be easily attained in Canada by a course of Law, three Points are

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# OPINIONS OF MEMBERS OF COUNCIL ON EXECUTING THE INSTRUCTIONS OF 16TH JULY 1779.[1]

The question now is,

> Whether it is expedient to put in execution His Majesty's additional Instruction To His Excellency the Governor dated in July last, requiring alterations to be made in the courts of Appeals and Common Pleas.

Every Member of this Honorable Board is, no doubt, well inclined to pay all due obedience to the King's commands—The alterations required by His Majesty are expressly said to be for the purpose of benefitting his

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principally to be attended to:" The three points are,—"First—to interpose such an Authority between the Sword & the People, that they may not be oppressed by any Person using the Generals name." &c. 2dly, "To divide the supreme Judicial from the Legislative Authority which are now conjoined in precisely the same Persons, viz the Council:" &c. 3rdly "To establish some Judicatory for small causes arising at a great distance from the Seat of the Ordinary Court in each district." These features, and especially the latter two, are discussed at some length, with detailed suggestions for bettering the system. See Q 16—1, p. 3. On May 6th the Lords of Trade sent an official communication to Richard Jackson, the Counsel of the Board, saying that it had under consideration "what Amendments it may be expedient to propose to His Majesty in the constitution of the Courts of Common Pleas within the Province of Quebec," Hence they "desire your opinion for their Lordships information, 'whether it is not fitting and 'expedient for the better distribution of Justice in Matters of Property, that the Chief Justice, '(whose function is at present confined to the cognizance of Criminal Causes only) should also 'preside in the Courts of Common Pleas established for the Districts, into which the Province 'is divided; and if so, at what, and how many periods in the course of the year his presence should 'be required so as best to satisfy the convenience of Parties resorting to his judgment, and least 'to interrupt and obstruct the other Duties of his office; also whether any objection lies against 'his sitting as a member of the Council upon Appeals from Courts, where he has presided in 'judgment upon the causes; and if so, what regulations you would recommend as to his inter-'ference in the Council upon such Appeals, whether by barring him from Vote, or even from 'Debate, unless called upon to give information in the same, likewise whether any regulation 'is advisable as to the persons composing the Council in cases of Appeal; and whether in such 'cases the Council, shall proceed to examine and correct all Errors both of fact and Law, and 'admit new or further Evidence.' " Q 18—B, p. 157. Jackson reported in favour of the proposed change, and most of his suggestions were embodied in the Instruction. C.O. 42, v. 9, p. 106. On July 1st the Board of Trade reported to the King in Council on the system of justice in Quebec and the Ordinances passed there in 1777, "and we thereupon humbly beg leave to represent to your Majesty, that, however it might have applied to your Majesty's Governor and Legislative Council, that these Ordinances would be adequate to the Salutary purposes for which they were framed, we find on the best information, that they are in many instances insufficient, and particularly for that the official duty of the Chief Justice is thereby confined to matters criminal and cases of Appeal; and that the frequency of Appeals from the Courts of Common Pleas, under their present Establishment, is attended with every manifest inconveniencies to your Majesty's Subjects," Q 18—B, p. 160. After this follows the substance of the Instruction here given. On Oct. 24th, 1779, Haldimand acknowledged the receipt of this Instruction and promised to lay it before the Council, though he doubts the wisdom of making any changes under the existing circumstances of the Province. He promises during the winter to give his views on such alterations as appear to him practicable. See Q 16—2, p. 621.

[1] Canadian Archives. See Minutes of Leg. Council, vol. D, p. 62. On February 11th, 1780, Colonel Caldwell moved that the following question be put, "Whether it is the opinion of the Board, that an Ordinance, such as is directed by the King's additional Instruction of the 16th of July, 1779, would be for the advantage of this Province, and would tend to a more speedy and equal distribution of Justice?" Ibid. p. 61. On February 14th, the motion was voted upon and defeated by 12 to 6. It was then formally "voted and resolved that an Ordinance such as is directed by the King's additional Instruction of the 16th July, 1779, would not be for the advantage of this province, nor tend to a more speedy and equal distribution of Justice." Whereupon, "Mr. Finlay, Mr. Cuthbert, Mr. Pownall, Mr. Allsopp, Mr. DeLery, and Mr. Grant, moved that their reasons, for their voices upon this Question might be incerted in the Minutes, resolved accordingly." Ibid. p. 62. Their opinions are recorded as here given. Follow-

subjects in this province, by an expeditious and efficacious distribution of Justice, founded on the principles of the British constitution: I therefore conclude that the ordinances of this province for establishing courts of civil Judicature have been laid before the great Law-Officers, and in consequence of their Report and Advice, the Instruction now before us has been framed. For that reason, it would be high presumption in me to suppose that the alterations which his Majesty enjoins to be made, would not be productive of the good intended; It is therefore my Advice that an ordinance be passed, deviating as little as possible from the great Outlines laid down in the Instruction, but to have its operation suspended untill his Majesty's further pleasure is known.

The intention of the suspension is to give time to the members of this Board (who apprehend that the alterations required will hurt, rather than prove beneficial to the subject) to state to the Minister, thro' His Excellency the Governor the evils that may, in their opinions, probably result, from a change in the present mode of administring Justice. I would wish humbly to represent that I think the person appealing from the sentence of a court, to a higher court, where a member of the court appealed from, sits as President, may count on the President's voice and influence. I would likewise represent that there ought to be four Terms annually at Montreal, instead of Two.

I am of opinion that this Board may guard against every inconveniency, in framing the Law. We may certainly make deviations of this nature without incurring censure, as having acted contrary to his Majesty's gracious Intentions.

(Signed) HUGH FINLAY.

Quebec 14th February
1780.

## OPINION OF GEO. POWNALL.[1]

With respect to the Regulations proposed in His Majesty's Instruction being carried into immediate Execution, being to the Advantage and benefit of the province, I think in the present unsettled and disturbed situation of the province, it would not.

With regard to its being the means of administring more speedy and effectual Justice;

In this point I confess myself both diffident and hardly able to form my Judgment, But I have so great respect, and so high an opinion of the wise

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ing Mr. Finlay's opinion comes that of Mr. Cuthbert, who simply states that "Having considered the same I am of opinion that the Ordinance so required by His Majesty's Instructions should pass into a Law, under such Regulations as may be thought necessary for the Good of the Province; and desire this my Vote may be entered in the Minutes of Council." Ibid. p. 63.

Hugh Finlay occupied the position of Deputy Postmaster General in Canada, an Imperial appointment.

[1] Canadian Archives, Minutes of Leg. Council, v. D., p. 63. Geo. Pownall came with Chief Justice Hey in 1775, having been appointed by Dartmouth as Clerk and Registrar of the Legislative Council of Quebec.

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and deliberate Consideration under which these regulations have been formed before recommended to this Council, and I am so sensible of the want of some Regulation in one of the Courts of Law of this province, that I recommend, as the best advice my Judgment is able to form, that the consideration and formation of the Ordinance recommended, be put off till the next Year, or some time of more Tranquility and Regularity.

(Signed) GEO: POWNALL.

## OPINION OF GEO. ALLSOPP.[1]

M[r] Allsopp's opinion is that it would be for the advantage and benefit of the province to advise the Governor,

That an ordinance be framed and passed in conformity to his Majesty's royal *additional Instruction* bearing date at S[t] James's the 16[th] day of July 1779, with a saving clause to the following purport ;

That neither the chief Justice nor any other Judge of the courts of Appeals or Common Pleas shall have two voices, or a preponderating voice in any of the s[d] courts, there appearing by this new regulation to be intended eight Judges in the court of appeals, and four in each of the courts of Common Pleas; and therefore, to remedy the inconvenience of an equal division of voices, Let it be enacted, That when the voices shall be equal in the Courts of Common Pleas, the eldest member of the Council, not being one of the Judges of the said Courts, shall be added to the Judges so divided in opinion, and the cause reheard—And when it shall so happen that the Voices in the Court of Appeals shall be also equally divided, That there be added to the Number of Judges in that Court, the eldest member of the council, not being a Judge of either of the Courts of Common Pleas, nor having before sat on the Cause, and the Cause reheard.

(Signed) GEO: ALLSOPP.

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[1] Canadian Archives, Minutes of Leg. Council, v. D, p. 63. Geo. Allsopp was one of the original British settlers in the Province of Quebec, and took a prominent part in maintaining the rights claimed by that element, including the rights of the civil as against the military authority. In 1768 he was appointed by Carleton as Deputy Secretary, Registrar, and Clerk of the Council. When, in 1775, Mr. Geo. Pownall was appointed Secretary and Registrar, Allsopp lost his office, but was shortly afterwards appointed a member of the Legislative Council. In Haldimand's time he was a merchant of Quebec. Following Allsopp's opinion came that of Wm. Grant of St. Roc, which was somewhat lengthy, but the substance of which was as follows: He points out that by the Quebec Act the power of erecting courts and appointing judges is vested solely in His Majesty, and in the Instruction referred to, His Majesty enjoins that an Ordinance be framed by the Council to amend the Ordinance now in force relative to the Courts of Civil and Criminal Jurisdiction. The Court appointed may not be ideally good, but it is better than the one now existing and more in accordance with the British Constitution. A court with judges who know the law is better than one with judges who have only common sense. He then specifies certain features which are objectionable and gives it as his opinion that there should be four terms in the year for Montreal as well as for Quebec. See Minutes of Leg. Council, v. D., p. 64. Mr. De Lery merely stated his opinion that they should follow the Instruction of the King. Ibid.

# OPINION OF MAJORITY OF LEGISLATIVE COUNCIL ON THE INSTRUCTION OF JULY, 1779.[1]

To His Excellency Frederick
Haldimand Captain General
and Governor in Chief, in
and over the province of
Quebec &ca &ca &ca

The Address of the Legislative Council in Council assembled.

The Legislative Council having taken into Consideration His Majesty's royal Instruction of the 16th of July 1779,[2] and being of opinion that the passing an ordinance in conformity thereto, would neither tend to the good of the people of this province, nor to a speedier or more impartial administration of Justice, beg Leave to communicate to your Excellency the reasons upon which that opinion is founded.

The present ordinances establishing courts for the administration of Justice[3] were framed and prepared from, and are agreeable to his Majesty's 14th and 15th instructions[4] to the Governor of this province so far as the local circumstances thereof would permit, and have been found to answer the good purposes for which they were intended ; Whereas the Change proposed of the same person presiding in the Court of Appeals and giving a Voice there in causes which he had already decided in the inferior court, would undoubtedly lessen that confidence which the people ought to have in the impartial administration of Justice, and which is so necessary to the peace and tranquility of Society.

It is likewise to be observed that in the Quebec Bill all Causes relative to civil rights and property, instituted in the Courts of Justice in this province, are to be determined agreeable to the Laws and Customs of Canada, of which Laws and Customs the Judges who at present preside in the Courts of Common Pleas for the Districts of Quebec and Montreal have had fifteen Years Experience and Study.

Upon the Establishment of civil Government in the Year 1764, the Governor and Council adopted the Mode of Terms,[5] and for several Years that mode was followed, when in the Year 1770 it was laid aside as having been found not adapted for this province.[6] The people had been accustomed to weekly courts, and in a small country, such as this is, Terms were too conspicuously made use of for the purpose of procrastination and delay in the decision of causes, not to have given dissatisfaction.

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[1] Canadian Archives, Minutes of Leg. Council, Quebec, v. D., p. 90. This expresses the opinion of the majority of the Council. The original form of this address cast a slur upon the Chief Justice, and, by implication, upon the Board of Trade, hence Haldimand referred it back for amendment. See Ibid., p. 76–7, also p. 81.

[2] See p. 706.

[3] See pp. 679-690.

[4] See p. 600.

[5] See Ordinance of 1764, p. 205.

[6] See Ordinance of 1770, p. 401.

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The having four Terms at Quebec and only two at Montreal, which is by far the most populous, and most commercial of the Districts, is an additional objection to that Mode proposed by the Instruction.

For these reasons, and after the most serious and deliberate consideration of the expediency of such regulation being put in force, our respect and attention to the rights of the crown, and our earnest wish for the welfare of his Majesty's Government, of which your Excellency, we hope, is sensible, oblige us to the necessity, though with the greatest Respect to the high Authority by whom the measure has been recommended, to differ so far in opinion.

We have further to add that the plan by which we have regulated our conduct, as the Legislative Council, has been to pursue those measures which appeared to us the best calculated to secure the province to his Majesty and to keep it dependent on Great Britain. We are sensible that some Alterations may and ought to be made in the Laws and Customs of Canada. But we apprehend that in the present critical state of the british Empire in America, Innovations in this province might be improper; And it is with regret we find ourselves obliged by our duty to the King, to mention to your Excellency the bad effects which the Reports circulated every summer of changes to be made in the mode of administring the affairs of the province have upon his service. They disquiet the Minds of the people and furnish plausible pretences to the Emissaries of the revolted Colonies and the other Enemies of the State, to insinuate that nothing is permanent under a british Government ; and the Quebec Act, the result of the generous and tolerating spirit, which distinguishes an enlightened Age and Nation, was the effect of an interested policy, and would be repealed as soon as the ends for which it was made were effected.

H. T. CRAMAHÉ
P. L. C.

Council Chamber
7th March 1780.

## HALDIMAND TO GERMAIN.[1]

Lord Geº Germain — QUEBEC 25th October 1780.

MY LORD,

The Minutes of the Proceedings of the Legislative Council with the Ordinances[2] which have been passed and to which my assent has been given, are transmitted in the Danae Frigate, no safe opportunity having presented

[1] Canadian Archives, B. 54, p. 354. Given also in Q 17-1, p. 270. This letter gives Haldimand's report on the proceedings of Council from Jan. 27th to April 12th, 1780. Two subjects engrossed virtually the whole attention of the Council; First, the communication of the Governor's Instructions and the expediency of acting on that of July 16th, 1779; Second, the question as to the constitutional power of the Council to prohibit the export of grain, flour, and other food stuffs, or to fix an arbitrary price for them. Naturally Haldimand reviews these questions and the discussion of them in Council, from his own point of view.

[2] For the Minutes of Council, Jan. 27 to April 12, see Minutes of Legislative Council, Quebec, v. D., pp. 57–102. Copies are given in Q 17–1, pp. 329–383, and Q 17–2 pp. 384–458. The ordinances passed at this session are given in Q 17–2, pp. 459–657, also in printed form Ordinances of the Province of Quebec, 1763–91, pp. 100–123.

itself during the course of the Summer—This letter will necessarily be a long one, I have now been upwards of Two years in the Province and in some respect qualified to give your Lordship an account of the real state of Persons and things. It may be the means of rendering my correspondence with regard to the Civil Affairs of the Province less Prolix for the future.

I have frequently been much embarrassed and upon many occasions have been intirely prevented from carrying into execution measures which I have considered as necessary for the safety and Defence of this Province and its Frontiers from the exhausted state of the King's Magazines with regard to Provisions and from the Difficulty as well as enormous Expense of supplying the Defficiency in the Province.

It was therefore with Indignation & Regret that in March 1779, in consequence of an express from Halifax to Mess$^{rs}$ Drummond and Jordan, I saw a successful attempt on their part and that of several Merchants or Traders to engross the Wheat and enhance the Price of Flour.—At that time there was not the least shadow of scarcity, but in less than a Fortnight the Price of Wheat was raised from 4 shillg$^{s}$ or 4/6 per Bushel to 6/ and upwards. I lost no time with the advice of a Quorum of His Majestys Council to forbid the exportation of Provisions, and to issue a Proclamation against ingrossing, forestalling and regratting:[1] The evil was not remedied, but the Price of Wheat was by various Artifices, assisted by a Bad crop in the District of Quebec, tho' that in Montreal District was tollerable, raised early in the Winter to Ten shillings per Bushell.

It could not escape my observation that the Merchants des Côtes, who went up and down the Country, & who by purchasing small quantities of Wheat at a very high Price, engaged the Inhabitants on the River Chambly & Sorrel to keep up the remainder of their Wheat in hopes of a still greater Price, were under the influence and supported by the credit of such Merchants as were most disaffected to Government. Perhaps it is not going too far to suspect in some, worse motives than the love of gain, for a conduct, which rendered every Farmer's House in the Parishes of that part of the Country, where an Invasion if attempted during the Winter, must take place, a Magazine of Provisions for an Enemy, who from the difficulty of Transport and other local circumstances could not bring any with them.

The Magistrate[s] of Quebec & Montreal had found it very difficult to oblige the Bakers to continue the exercise of their Trade,[2] and still more so to procure Flour for the daily and immediate consumption of the Towns. The Poor suffered much and all Ranks of People looked up to the meeting of the Legislative Council as the time when something effectual would be done for the relief of the Poor, and to put a stop to a spirit of ingrossing

[1] On Nov. 7th, 1778, six of the Council were called together, and recommended the Governor to issue a proclamation prohibiting any one from exporting wheat, flour, or biscuits, without a license from the Governor, until Dec. 1st, and after that a total prohibition of export until Aug. 1st, 1779. This was approved by the Governor and the proclamation issued. See Q 16-2, p. 674; also B 78, p. 16. As this did not lower prices, the bakers were next dealt with, and a further proclamation, being the one here referred to, was issued. See also B 78, pp. 25 & 31.

[2] See B 78, p. 23.

which had perverted the Province. Therefore I ordered the Legislative Council to assemble on the 27th of January and recommended the high Price of Wheat & Flour (the first being at that time at ten Shillings per Bushel, the other at 40/. per 100 lbs for the worst of Flour) to their serious consideration.[1]

A Committee consisting of Messrs Finlay, Dunn, Cuthbert Harrison, Alsop, St Luc, Gugy, Grant & Baby were appointed to consider and propose ways and means to reduce the high Price of Wheat & Flour. Their Report was that an Ordinance should be made to prevent the exportation of Provisions for a limited time, and that an address should be presented to me, requesting a Renewal of the Proclamation against ingrossing &c.—

This did not appear sufficient to many members of the Council, who considered that tho' the exportation had been prevented last summer, and that tho' the Proclamation, of which the Renewal was requested, had been published early in the Summer—The Price of Wheat and Flour had been gradually raised to an exhorbitant highth, not from any real scarcity, but from the avarice of Ingrossers. It was therefore proposed that an Ordinance should be passed or a clause added to that for non exportation, fixing or rating for a limited time or untill the new Crop could be got in, the Price of Wheat and Flour. This was the more necessary as otherwise there would be a risk of great part of the Lands in the District of Quebec remaining unsown, as the Inhabitants could not afford to give 10/- per Bushel for Seed Wheat.

This gave occasion to much altercation and great variety of Argument, the Attorney General[2] was applied to for his opinion as some Members contended that the Legislative Council had under the Quebec Bill no authority to levy Taxes or impose Duties, and that fixing the Price of Wheat And Flour was Synonimous to imposing Taxes or Duties : His opinion coincided with theirs, but as it was couched in a mysterious manner as if it had been founded more upon the words in which the Question was stated than the merit of it, It was Proposed to have the sense of the Legislative Council with regard to the Legality of the measure, as if the Legislature had not the authority it was in vain to reason on the Expediency of the measure this Proposal so necessary to the Discussion of the Measure in question and seemingly so essential to the Authority of Government, was overruled by one Voice. It was then Proposed whether the price of Wheat and Flour should be fixed by Ordinance for a limited time, and it was resolved by a Majority of one voice in the negative—Messrs Cramaché, Finl[a]y, Dunn, Cuthbert, L'Eveque, Collins, Pownall, Alsop, De Lery, Harrison & Grant being against fixing the price—Messrs Mabane, St Luc, Bellestre, Gugy, Fraser, Caldwell, St. Ours Longue[u]il, Baby and Holland being for it. Not willing to disturb the Proceedings of the Legislative

[1] See Minutes of Leg. Council, v. D., p. 57.

[2] James Monk was appointed Attorney General in 1776, to succeed Henry Kneller who had died. His opinion here referred to is given in Minutes of L.C., v. D., p. 68.

Council, the Gentlemen who wished to fix the price, did not immediately signify any desire to file their reasons of Dissent, but at a subsequent meeting when only Three of them were present, they Proposed to have their reasons of Dissent incerted in the minutes, as it would be the certain means of having the opinion of the proper Law Officers in England on the Legality of the measure, as it was of much Consequence to the good of the Province that the question should not be left in Any respect doubtful. This Proposal tho' reasonable in itself was refused under pretence of Form, tho' as yet there is no kind of Form established by the Legislative Council for its proceedings. The Paper was filed in the Council Office, it is here annexed as well as the opinion of M^r^ Williams,[1] the only Lawyer of any note, except the Attorney General, and I beg that Your Lordship will lay the reasons of Dissent, the Attorney General's and M^r^. William's opinions before the proper Law Officers.[2]

However diffident I might be of my own opinion with regard to the Legality, I could entertain no doubt of the expediency of the measure. It was the only one that could without delay reduce the high Price of Provisions and check the Spirit of speculating in the necessaries of Life, which is equally prejudicial to the Welfare of the People as to the service of the Prince. Notwithstanding the other measures which the Legislature adopted and which I will Afterwards mention, the exhorbitant price of Wheat and Flour continued the same, or rather increased, till the certain prospect of a new & plentiful crop lowered it a little about the latter end of August, but not till after I had been under the necessity to order the Commissary General to purchase Flour at a high rate from the Ingrossers, who thus in spite of all my efforts have profited by the Public Distress

When it is considered that Great Britain is engaged in an expensive War, and which is carried on at 3000 miles distance by which the supplies of Provisions &^c^. are exposed to the Danger of the sea and Powerful enemies, it becomes the Duty of every good Citizen to do every thing in his Power to Diminish the Price of Provisions, as by that means Government may be enabled to establish and fill Magazines so as to obviate the Bad Consequences which might arise from the Provision Fleet from Europe for New York, & the Northern Parts of America falling into the Hands of the Enemy, or an Enemy's Fleet being the first in the River S^t^. Lawrence. This Country is in peculiar Circumstances, whilst the Rebellion continues in the neighbouring Colonies, little or no Resources can be had from Importation, which is the natural means to Reduce the Price of any Commodity, besides, the Climate absolutely prevents it for seven months of the Year, hence occurs the great necessity of Government taking precautions to Secure

[1] Jenkin Williams was born in Wales and after coming to Canada was appointed Register in Chancery for Quebec province, 1768–1775, Clerk of the Council from 1777, Sol.-General 1791, and Judge of the King's Bench at Montreal about 1793.

[2] The reasons for dissent given by A. Mabane, F. Baby, and Saml. Holland will be found in Q 17–1, p. 324; The motion to enter this paper in the minutes of Council was defeated. See minutes of Leg. Council, v. D., p. 101, the opinion of Attorney General Monk in Minutes of Leg. Council, v. D., pp. 68–69, and that of Jenkin Williams in Q 17–1, p. 315. The latter was not presented in Council.

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Bread for the People, as well as for the Army : Humanity, as well as Policy justifies the measures—a few Interested Traders would have been dissatisfied and would have endeavored to have made a Clamor against it in London, but in Canada it would, instead of a Revolt which some People affected to fear, have given general Satisfaction to the Canadians who looked for it and Stood in need of it, & would have given them a Confidence in that Government, whereas there are not wanting people to insinuate to them that they could not rationally expect Redress from a Council, one half of which at least was Composed of Dealers in Wheat & Meal Mongers.[1]—

The Legislative Council, having resolved not to fix the Price of Wheat and Flour by Ordinance, were pretty unanimous in preparing & passing one to prevent the exportation of Provisions for two years, tho' there is nothing repugnant to the Laws of Trade in the Ordinance,—Yet not to interfere with the Custom-house, the Legislative Council required the Naval Officer to take the Bonds &[ca] tho' that Business could have been done with more ease to the Merchants at the Custom-House. The Ordinance received my Assent & I hope will next Year be productive of good Consequences in keeping low the Price of Provisions, as I will on my part be Careful that the Respective Officers be diligent in putting it in Force.[2]—

As many of the Members who were averse to fixing the Price of Wheat and Flour, had declared their Readiness to Concur in passing an Ordinance against Ingrossing, Forestalling & regratting in place of the Address to me for the Renewal of the Proclamation, the Heads of an Ordinance were prepared accordingly. In consequence of the successful attempt to engross the Wheat in the Spring 1779, which I have already mentioned to Your Lordship, I had Consulted the Attorney General & Received his opinion in writing that the Statute of Edward the sixth against Ingrossers Forestallers & Regrattors was in force within this Province. In Conformity with that Opinion and with the advice of a Quorum of the Council I issued a Proclamation declaratory of that Law, & of the Method of convicting Offenders by the Justice of the Peace in their Quarter-Sessions without the Intervention of a Jury which in this Case was the most advisable mode of Prosecution, as the Old Subjects who give the Ton on Juries are Traders and few of them have any Objection or Scruple to get Money whether by Ingrossing, Forestalling or Regratting

The Legislative Council made the Same Statute the Basis of the Ordinance & extended the Offence of Ingrossing and Forestalling to the Proprietors of milk & Manufacturers of Flour, As otherwise a Combination

[1] That Haldimand's suspicion of the grain merchants was really unfounded, and that he was virtually holding them responsible for an unusual dearth of food products in the face of an unusually large consumption, was afterwards abundantly proved even from his own despatches. The grain merchants were ultimately prohibited from either buying or selling grain, yet the price was not lowered; the bakers were then regulated, but without increasing supplies; finally, it was resolved to compel the farmers, with the aid of search warrants, to bring out their supposed hoards, still nothing of consequence could be extracted from them until the following harvest.

[2] This Ordinance was entitled, "An Ordinance To Prohibit, for a limited time, the exportation of wheat, pease, oats, biscuit, flour or meal of any kind; also of horned cattle; and thereby to reduce the present high price of wheat and flour." See Ordinances, 1763–91, p. 100.

of Five or Six of these Men by buying up a Large Quantity of Wheat, would have been Sufficient to Raise the Price of Flour to whatever Sum they pleased. This gave great Umbrage to Messrs Cuthbert, L'Eveque, Alsop & Grant, who all have or proposed to have great dealings in Wheat and Flour. The Majority however felt the necessity of something being done, The Ordinance was passed and Received my Assent. It was printed & ready to be published, when fortunately it was discovered by Mr. Powell,[1] an Attorney at Montreal, who was employed to deffend an Ingrosser against whom a Prosecution had been Commenced, that the Statute of Edward the VIth had been Repealed.

The Legislative Council had agreable to that Statute inflicted the Penalty of the Pillory (which, as Carreying Infamy with it would have had great Effect in deterring Canadians) upon Persons Convicted of the third Offence. The Quebec Act restrains the Legislature of this Province from Carrying into Execution without His Majestys Previous Approbation, any Ordinance inflicting Severer Penalties than Fine or three Months Imprisonement—I was therefore under the necessity to re-assemble the Council, to alter that Clause of the Ordinance, as likewise the Title of it[2]—I cannot Suppose that the Attorney General concealed from me or the Legislative Council any knowledge he may have had of that Statute being repealed, at the same time I must acknowledge to You My Lord that there have been many things in that Gentleman's Conduct, which Tend to destroy that Confidence which I should have in the Person who fills that Employment.

I had in my Speech to the Council[3] recommended to their consideration the Fees which were taken by the Officers of Government & mentioned those taken by the Lawyers as particularly Complained of—

Law-Suits in general are more owing to the Inhability than want of Inclination in people to pay their Debts, hence the Rapacity of the Lawyers was the more Conspicuous, as falling heavy upon the Poorer sort of People tho' there was but too much Cause of Complaint in the other Departments.

Governor Murray had in the Year 1765 published an Order of Council wherein he regulated the Fees of the Officers of Government and of the Lawyers at a Reasonable Rate, but after his Departure little Regard was paid to that Order except in the Courts of Common Pleas, & its Authority ceased entirely in May 1775.

Sir Guy Carleton had in the Sessions 1775 proposed to Regulate the Fees of Office & had that Business very much at heart. Committees were appointed for that Salutary purposes & tho' many Obstacles were thrown in the Way, great Progress was made. The Ordinance was lost for that

[1] William Dummer Powell was admitted to the practise of Law in Quebec Province, 1779, and practised in the Courts of Montreal. He carried to England the petition for the repeal of the Quebec Act in the latter part of 1783. He was afterwards a Judge, and later a member of the Legislative Council and Chief Justice in Upper Canada.

[2] The Ordinance as passed was entitled, "An Ordinance Describing the persons who shall be deemed Forestallers, Regrators and Ingrossers in this Province, and inflicting punishment upon those who shall be found guilty of such offences." See Ordinances, 1763–91, p. 103.

[3] See Minutes of Leg. Council, v. D., p. 57.

time by Sir Guy Carleton's putting an End to the Session in Consequence of Motions made in Council by Mr. Livius & others.[1]

The Business was in itself complicated & difficult, but it became more So from the Circumstance of many of the Officers of Government, whose Fees were to be Regulated, being Members of the Legislative Council. The Committee had many Obstacles to Surmount & particularly from the D. Surrogate of the Admiralty and the Attorney General. The D. Surrogate inserted that the Court of Admiralty in England had alone the Right to Regulate the Fees of the Vice Admiralty Court, where Parliament had not already done it,—This Matter was at last made easy by a Letter being produced to the Committee from the Secretary of the Treasury to Mr. Cramahé at that time Commanding the Province, acquainting him that the King had allowed the Judge of the Vice Admiralty Court at Quebec a Salary of £200 per Annum in lieu of all Fees.—

The Attorney General claimed the Fees taken in the Leeward Islands in Consequence of words incerted in Mr. Suckling's Mandamus (tho' that Attorney General's Fees are regulated in Gov$^{r}$ Murray's Order of Council in the Year 1765) and implied in Mr. Monk's Mandamus, which intitled him to all Fees taken by his Predecessors—. He was Supported in his Claim by Mess$^{rs}$ Finlay, Cuthbert, Alsop & Grant, who however willing they may be to Circumscribe the King's Authority in measures of General Utility to his Service & the Welfare of his People, are for carrying on to the greatest heighth his Prerogative to grant Letters Patent for the Emolument of Individuals tho' to the Oppression of the People—The Ordinance was Passed & received My Assent.[2] The Fees in general are by far too high, and more than the People of this Province can bear.—The Price of Provisions and other necessaries of Life have risen So much within these few Years that a greater Reduction of the Fees could not well have taken place at present. The Ordinance is to be in force for two Years. at the expiration of that time It is to be hoped that the Legislature will be enabled from Experience to make a more perfect List of Fees, more permanent & less burthensome to the People for the Officers of this Province, than the present one ag$^{t}$ which they nevertheless exclaim

There was an Ordinance passed & assented to, relative to the Maitres des Postes,[3] many Members were averse to the Legislative Councils interferring in that Business for the present as they wished during the Continuance of the War at least that it was annexed to the Quarter Master Generals Department, or to that of the Inspectors of the Corvées.—They Coincided nevertheless with the other Members who perhaps pushed it more with a view to the Benefit of an Individual than to any Advantage which might Accrue to the Public, Care however was taken that I, as Governor of the

[1] See Minutes of Leg. Council, v. D., pp. 25–44.

[2] The Ordinance is entitled, "An Ordinance For the regulation and establishment of Fees." Ordinances, 1763–91, p. 111.

[3] This Ordinance is entitled, "An Ordinance For regulating all such persons as keep horses and carriages to let and hire, for the accommodation of travellers, commonly called and known by the name of *Maitres de Poste*." Ibid. p. 123.

Province should have the Intire Authority in appointing Such Inspectors & giving them Such Instructions as I pleased. This Business is of more Consequence to the Safety of the Province than would at first Sight Appear, but it remains with me to put it into the Hands of Such Officer of Government as I can Confide on, & it is at present under the direction of Mr. Finlay, who has Talents & Experience in that Department.—[1]

In my Speech to the Legislative Council[2] I mentioned the Additional Instruction of the 16th of July 1779, which the Lieut Govr by my order communicated on the 28th of January with the Letter from Your Lordship accompanying it. I will give Your Lordship an Account of the Transactions which it gave rise to, without having regard to Dates in the minutes of Council in the Same Manner as I have done that of the Wheat Business.

Mr. Alsop moved that the L. Council Should previously address me to Communicate any other Instructions which I may have Received relative to passing Laws &c.[3]—He had in Conjunction with Mr. Livius & others observed the Same Conduct the Second Sessions of the Legislative Council, and which contributed to Embroil the Council with my Predecessor. The Motion was considered as indecent & rejected by a Great Majority of the Council, many of Whom knew that Mr. Livius & others had a Copy of Sir Guy Carleton's Instructions in their hands at the same time they were teizing him with motions in Council to Communicate them. The Lt. Govr nevertheless Acquainted the L. Council at their next meeting that I had two more Instructions, which I did not think proper to communicate for Reasons, which I would give to the King.[4] Some Members wishing that a Distant Day Should be appointed for taking the Instruction into Consideration, It was Resolved accordingly, and in the mean time the Instruction was ordered to lie on the Table for the Consideration of the Members.

On the Day Appointed for that Business Mr. Caldwell moved that the Question Should be put ; whither passing an Ordinance agreable to the Instruction of the 16th July[5] would either contribute to the Good of the

[1] Mr. Finlay was Deputy Post Master General. This was an Imperial appointment, and for many years postal matters remained under the direct control of the British authorities.

[2] See Minutes of Leg. Council, v. D., p. 57.

[3] See ibid; p. 61.

[4] See ibid; p. 67. In a letter from Germain to Haldimand April 12th, 1781, referring to his conduct in these matters he says: "I have had much Satisfaction in the View your Dispatches have given me of the Military State of the Province, and in expressing in my former Dispatch His Majesty's Approbation of your Conduct in your Capacity of Commander in Chief. It is therefore a great concern to me that any part of your Proceedings, as Civil Governor, does not appear in the same favorable light, or merit the like approbation.

"The King commanded me to transmit to the Board of Trade the Ordinances passed by the Legislative Council and the whole of your Dispatch No 67, and you will receive from their Lordships the Observations which the Consideration of those Papers have given occasion to, and as their Lordships have communicated them to me, and they entirely correspond with my own Sentiments, it is unnecessary for me to enlarge upon the Subject, as I should only repeat what their Lordships have said: it is however fit you should further be informed, that your withholding from the Council the Instructions which you were originally commanded by the King to communicate to them, and that Command repeated by an Additional and Special Instruction from His Majesty, is considered by His Majesty, as well as the Lords of Trade and myself, as such an Instance of disobedience to the Royal Authority as ought not to be passed over, if longer persisted in." Q 18, p. 37. The "Observation" of the Board of Trade follows this letter of Haldimand referred to as Dispatch No. 67. See p. 722.

[5] See note 1, p. 707.

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People, or to the speedy & impartial Administration of Justice? A great Majority was of Opinion that it would not.

It was with Equal Regret that the L. Council found themselves under a Necessity to withhold their Assent to a Royal Instruction and which had been proposed by the Governor of the Province in Order to be Carried into Execution. It was therefore resolved on motion of Mr. Mabane that an Address Should be presented to me containing the Reasons.[1]

The other Business of the Sessions prevented the Address from being presented till the 7th of March. Tho' I was convinced of the Strength and Truth of the Reasons which were contained in it. I disapproved of the Manner in which some of them were expressed and therefore remanded it to be re-considered by the Legislative Council[2]—: However irregular Some of them might think this proceeding, the Majority did not hesitate to alter the Expressions which had given me Offence. Mr. Caldwell further Moved that the Original Address should be expunged from the Minutes.—This was Strongly & very inconsistently opposed by Messrs Finlay, Alsop & Grant, who, tho' they had voted against it, yet as it was capable of giving me Offence or of indisposing the King's Minister against the Majority wished Ardently that it should remain on the Minutes. In this the Majority acquiesced. Thus the Original Address is preserved in the Minutes.[3] I inclose you that, which was presented to me,[4] with an authenticated List of the Causes which had been decided in the Court of Appeals. I likewise inclose the opinion or advice which Messrs Finlay, Alsop, Pownall & Grant gave me on the Occasion,[5] all of them are Sensible either of the Impropriety or Impracticability of Carrying the Instruction into Execution, & yet they are dissatisfied with the Legislative Council for not having passed an Ordinance in Conformity to it. Such Conduct needs no Comment, Party Spirit is the Enemy of every Private, as well as Public Virtue, since my Arrival in the Province I have Stiered Clear of all Parties and have taken great Care not to enter into the Resentments of my Predecessor or his Friends, but this present Occasion obliges me to Declare to Your Lordship that in general Mr. Livius's conduct has not impressed people with a favorable Idea of his Moderation, At the same time My Lord that I do not in the least call in Question the Propriety of the Decision which has been made by the highest & most respectable Authority.

As it is my Duty, it has been my Business to inform myself of the State of the Country & I coincide with the Majority of the Legislative Council in Considering the Canadians as the People of the Country, and think that in making Laws and Regulations for the Administration of these Laws, Regard is to be paid to the Sentiments and Manner of thinking of 60,000 rather than of 2,000—three fourths of whom are Traders & Cannot

[1] See Minutes of Leg. Council, v. D., p. 65.
[2] See ibid., p. 81.
[3] See ibid., pp. 76–7.
[4] See p. 710.
[5] See p. 707.

with propriety be Considered as Residents of the Province.—In this point of view the Quebec Act, was both just and Politic, tho' unfortunately for the British Empire, it was enacted Ten Years too late—It Requires but Little Penetration to Discover that had the System of Government Sollicited by the Old Subjects been adopted in Canada, this Colony would in 1775 have become one of the United States of America Whoever Considers the Number of Old Subjects who in that Year corresponded with and Joined the Rebels, of those who abandoned the defence of Quebec in virtue of Sir Guy Carleton's Proclamation[1] in the fall of the same Year, & of the many others who are now the avowed well wishers of the Revolted Colonies, must feel this Truth however national or Religious Prejudices will not allow him to declare it.

On the other hand the Quebec Act alone has prevented or Can in any Degree prevent the Emissaries of France and the Rebellious Colonies from Succeeding in their Efforts to withdraw the Canadian Clergy & Noblesse from their Allegiance to the Crown of Great Britain.[2] For this Reason amongst many others, this is not the time for Innovations and it Cannot be Sufficiently inculcated on the part of Government that the Quebec Act is a Sacred Charter, granted by the King in Parliament to the Canadians as a Security for their Religion, Laws and Property.

These being My Sentiments, Your Lordship will Conceive Some of the Reasons, which prevented me from Communicating the 12th, 13th & 16th Instructions[3] to the Legislative Council. I have now been upwards of Two Years in the Country, have Conversed fully with all kinds of Men and have not found that the People were dis-satisfied with the Ordinances, which Regulates the Proceedings in the Courts of Justice ; on the Contrary, all are Sensible that Debts are easier Recovered and with less Procrastination than formerly. The English Law of Evidence having been adopted in Lieu of that of the French Law in Commercial matters[4] has been found by Experience adequate to Securing the Interests & Property of the Merchant—The Clamor about the Trial by Juries in Civil Causes is Calculated for the Meridian of London ; in Canada, Moderate & upright Men are Convinced of the abuses to which that Institution is liable in a Small Community where the Jurors must be all Traders, and very frequently either directly or indirectly connected with the Parties—In the Civil Courts of Original Jurisdiction, the Evidence is taken down in writing, So that not only the Judges in Appeal, but the Whole World can Judge of the Fact upon which the Judges form their Decision. Be Assured My Lord that however good the Institution of Juries may be found in England, the People of this Country have a great Aversion to

[1] Referring to Carleton's Proclamation of Nov. 22nd, 1775, ordering all those who refused to take up arms in defence of Quebec to leave it within four days. See Q 12, p. 24.

[2] Yet he sent several despatches to prove that they were quite ready to withdraw. See for instance, Q. 17-1, p. 195, and Q 19, p. 268.

[3] Referring to the introduction, as far as possible of the English Laws, the granting of the writ of Habeas Corpus, and the holding of government appointments at pleasure only. See pp. 599, 600, and 697.

[4] Referring to sec. 7 of the "Ordinance to regulate the Proceedings in the Courts of Civil Judicature in the Province of Quebec." See p. 682.

them ; they Cannot Reconcile themselves to have their Property determined by Men of that Station of Life of which Juries must be Composed, the Idea of Twelve Men being necessaryly of one Opinion before a Judgment Can be Obtained, revolts their understanding. An Innovation of that kind would have Many Inconveniencies.—There are Many Foreign Troops in the Province and there are not wanting ill disposed persons who would Stir up vexatious Lawsuits against them in Damages for imaginary Injuries if there was a Mode of Trial that Could Submit a German Baron to a Decision of Twelve Tavern keepers or Traders and that with the Sole View of Disgusting him with Our Service

It was with great Regret that I found MySelf Obliged not to Communicate the Instruction relative to the Security of Personal Liberty.[1]— The Citizens in no Country ought to be liable to Long Imprisonments, Persons accused of Crime ought Certainly to be brought in a Limited Time to Trial, but in Time of War and Rebellion, it would be impolitic and in the present circumstances of the Province, highly dangerous to attempt an Innovation of the Kind.—I have been under the disagreable Necessity of imprisoning Several Persons[2] for corresponding with Rebels or assisting them to Escape and have great Reason to Suspect Many More of being Guilty of the Same practices, but have made it a Rule to pretend Ignorance as often as I can, and am Satisfied with guarding against Bad Consequences of their Treachery except where their crime is publickly known, and then I think it my Duty to take Notice of them, as a Contrary Conduct would betray weakness & encourage Others to follow their Example.—This was the Case with Mr. Charles Hay of Quebec & Mr. Cazeau of Montreal. The Clerk of the former was detected & apprehended last March as he was Setting off for Albany.—He had a Certificate from Charles Hay whose Brother is a Quarter Master General in the Rebel Army, desiring Credit to be put in him.—The Clerk had confessed before a Magistrate that his Master Sent him and that Mr. Cazeau procured him a Guide.—The first applied by Petition to the Court of King's Bench at the last Sessions last May for the District of Quebec praying a Writ of Habeas Corpus. The Petition was rejected by the Unanimous Opinion of the Commissioners for executing the Office of Chief Justice,[3] who by that means and a Public Declaration which they made in 1779 at the Trial of Mr. Stiles of the Viper on an Indictment for Murder, of the King's having a legal Right to Impress Mariners of the Navy in time of War, have very much Strengthened the hands of Government.—The Province is Surrounded by Enemies from without and as happens in all Civil Wars is infested with Spies & Secret

[1] The 13th article of the Instructions referring to the writ of Habeas Corpus. See p. 600.

[2] Referring to the ultimate outcome of a number of these imprisonments, we find the following statement ,"Several actions for damages for false imprisonment, were instituted against him in England; the persons who had been imprisoned, recovered judgments against him, which were paid by Government." History of Canada; from its First Discovery to the Year 1791. By William Smith. Quebec: 1815. Vol. II, p. 165.

[3] When Carleton dismissed Peter Livius from the position of Chief Justice, he re-appointed Messrs. Mabane, Dunn, and Williams a Special Commission to execute the office of Chief Justice, as had been done during the absence of Hey. See B 37, p. 196.

Enemies from within—Your Lordship Must be Sensible how necessary it is that Government Should be Supported. I confide in Your Lordships Zeal for the King's Service, to give me every Assistance in Your Power, and in Your Candor and Regard for My Self to assure His Majesty that My views in the Civil and Military Affairs of the Province, Shall and Can have no End but the Advantage of his Service and the Good of his People.—I Cannot finish this long Letter without requesting Your Lordship to be Convinced, that whatever System I may adopt, and whatever Opinion I may have formed of Men and things, is and will be the Result of my own Reflections and of my attention to my Duty, and not the Suggestion of Persons Influenced by attachment to former Systems or Plans of their own, at the Same time that I Cannot alter or Reject former Measures which I think for the Good of the King's Service, agreable to the wishes & Suitable to the wants of the People over whom I preside, because they May be agreable to Men, who perhaps have had private Views and Resentments.

I have the Honor to be with the greatest Respect and Esteem My Lord
Your Lordships Most Obedient
& Most humble Servant

(Signed) FRED HALDIMAND.

## THE LORDS OF TRADE AND PLANTATIONS TO HALDIMAND[1]

1781. Quebec
April 10th

Frederick Haldimand Esquire, Governor of Quebec.

Sir, We have had under our consideration the Duplicate of your Letter to Lord George Germain, dated the 25th October last, together with the several Inclosures, and the Minutes of Council, and Ordinances transmitted therewith; and having paid that attention to them, which their Importance naturally required, We now give you our Sentiments upon the general Contents of your Letter, which, for the greater precision, we shall do under the three following distinct heads.

1st The steps taken by you, and the legislative Council, in consequence of the great advance in the price of Wheat, and Flour, and the appearance of an intended Monopoly of those Articles.

2dly The Ordinance for the Regulation of Fees.

3dly The opinion of the Legislative Council upon His Majesty's additional Instruction for the regulation of the Courts of Justice; and under this head we shall also consider your Conduct in witholding the Communication of some Articles of your general Instructions, which you were by an additional Instruction particularly directed to lay before the Legislative Council; and the not complying with another additional Instruction, sent

[1] Canadian Archives, Q. 18 B., p. 174.

therewith, for the express purpose of remedying an Abuse which prevailed in the method of transacting Business in Council.[1] .....

With respect to the ordinance for regulating Fees, it is, and ever will be an object of our Earnest attention, that no exorbitant Fees be exacted by the Civil Officers in His Majesty's Provinces, by which his Subjects may be aggrieved; and We therefore applaud the Measures you have taken to prevent such a practise. As to the Attorney General, when we consider, that his Salary is double what was heretofore allowed for that office; and that he is by the Ordinance allowed to take, in his private practise, one third more fees, than are established for other practitioners, we are of opinion he cannot with Justice think himself Injured; nor shall we countenance any improper or ill founded Complaints or Claims made by him, or any other of the parties Concerned. as the ordinance is to continue for two years, you will have time, as you observe, to experience, what good Effects it may be attended with; and We therefore recommend it to you not to let this Salutary regulation then expire with the Ordinance; but to induce the Council to re-enact the same, as it now stands, or with such Alterations as you and they may think it expedient to make therein in due time.

We shall now proceed to the last head of our Consideration, as to the additional Instruction, proposing a Regulation in the Courts of Judicature,[2] from some expressions in your Letter we are led to suppose, that the Legislative Council might look upon the proposed Regulations, as a measure proceeding from the application or interference of M$^{r}$ Livius, It is therefore incumbent upon us to inform you, that was not the case; That it proceeded entirely from a wish of His Majesty's Ministers to render the Office of Chief Justice, as generally and extensively useful to his Majesty's Subjects in Quebec, as possible; & to prevent the frequency of Appeals; and the regulations recommended in the instruction were Judged the most likely to answer the end proposed.

If in any instance the Methods to be adopted were not thought sufficient for that desireable purpose, his Majesty's well known intention, that every measure, proposed for the good of His Subjects, should be effectual in its operation, would have induced him to have paid the utmost attention to any respectful application of the legislative Council on that head: However as they have considered his Majesty's Gracious Intentions in this respect upon a different ground; If the conveniences, which have arisen for the present mode of proceedings in the Courts of Justice, should continue, they alone are blameable for the Consequences.

Sensible as we are of your merit, and the purity of your intentions, it is painful for us to proceed to the consideration of your not communicating to the legislative Council the general Instructions, which you were particularly directed to do by the additional Instruction[3] transmitted to

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[1] The section which follows, dealing with the regulation of prices, is omitted.
[2] See p. 706.
[3] See p. 705.

you for that express purpose; And, as far as appears to us, not complying with another additional instruction[1] sent you therewith, for regulating and preventing an abuse introduced by your predecessor, of doing the business of Council by a select number of the Members, under the name of a privy Council; yet the not paying obedience to express Instructions, the compliance with which rested with yourself only, is a matter of too serious importance for us not to give you our unreserved opinion upon it.

The instructions in question were founded upon the most convincing necessity, and his Majesty's Pleasure was conveyed in terms so peremptory and express, that we are at a loss to conceive, how it was possible for you to hesitate upon an instant obedience to them: had we only consulted our immediate line of duty, we should have submitted to His Majesty our opinion upon this conduct on your part; but as a proof of our good wishes for you, and that we place the utmost confidence in your assurances, that your views, as well in the Civil as the Military Affairs of the province, have no end, but his Majesty's Service; however we conceive you to have been in this instance mistaken, we have adopted this Method to inform you, what we think of this part of your Conduct, as Civil Governor; and as we persuade ourselves, that you will immediately, upon the receipt of this letter, comply with the said instructions, we forbear to add what we must upon a contrary Conduct of necessity do.

We flatter ourselves, that no spirit of party, private views, or resentments in any of his Majesty's Subjects over whom you preside, will so far prevail, as to interrupt that peace and harmony which we sincerely wish may always subsist between the powers governing and the People governed, in every part of His Majesty's Dominions.

We are,
Sir,
Your Most Humble,
Servants
Grantham
Thomas de Grey Jun$^{r}$
And$^{w}$ Stuart
E. Gibbon
Hans. Sloane
Ben: Langlois

Whitehall
April 10. 1781

Ex$^{d}$

[1] See p. 704.

SESSIONAL PAPER No. 18

(Copy) ORDINANCE *RE* PROCEEDINGS OF COURTS.[1]

Anno Vicesimo Tertio Georgii III. Regis.

CHAP. I.

An Ordinance for further continuing an Ordinance made the 25th Day of February, in the seventeenth year of His Majesty's Reign, intituled, "An Ordinance to regulate the Proceedings of the "Court of Civil Judicature in the Province of Quebec." and in Amendment thereof.

Be it Enacted and Ordained by His Excellency the Governor, by and with the Advice and Consent of the Legislative Council of the Province of Quebec, and by the Authority of the same it is hereby Enacted, That an Ordinance made in the Seventeenth year of His Majesty's Reign, intituled. "An Ordinance to regulate the Proceedings of the Courts of Civil Judi- "cature in the Province of Quebec" and every Article and Clause therein contained, shall be and continue, and the same is hereby further continued, from the passing of this present Ordinance unto the Thirtieth Day of April One thousand seven hundred and Eighty five.

And whereas in and by the Eighth Article of the said Ordinance it is Ordained and Enacted, That a Writ of Appeal shall be allowed if the Appellant hath given the requisite Security for prosecuting the same ; It is Enacted and Ordained, That the Judges to whom any such Writ of Appeal may be directed shall and may be empowered, and are hereby lawfully authorized to Accept of Personal Security on Bail by Justification, for sufficiently prosecuting all or any such Writ of Appeal to be sued out and prosecuted according to the said Ordinance, any Thing contained in the Ordinances or Laws of this Province to the contrary notwithstanding.

(signed)
FRED: HALDIMAND

Ordained and Enacted by the Authority aforesaid, and passed in Council under the Public Seal of the Province at the Council Chamber, in the Castle of St Lewis, in the City of Quebec, the Fifth day of February, in the Twenty Third year of the Reign of our Sovereign Lord George the Third, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith and so forth, and in the Year of Our Lord One thousand, Seven hundred and Eighty three.

By His Excellency's Command.

J: WILLIAMS
C. L C.

[1] Canadian Archives, Q 62 A-2, p. 599, given in Ordinances, 1763–91, p. 133. This Ordinance as passed in 1777 (see p. 682) had been renewed without amendment in 1779 and 1781, and is again renewed with a slight amendment.

# TREATY OF PARIS, 1783.[1]

*DEFINITIVE TREATY of Peace and Friendship between His Britannic Majesty and the United States of America.—Signed at Paris, the 3rd of September*, 1783.

In the Name of the Most Holy and Undivided Trinity.

It having pleased the Divine Providence to dispose the hearts of the Most Serene and Most Potent Prince, George the Third, by the grace of God, King of Great Britain, France and Ireland, Defender of the Faith, Duke of Brunswick and Lunenburg, Arch-Treasurer and Prince Elector of the Holy Roman Empire, &c., and of the United States of America, to forget all past misunderstandings and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore : and to establish such a beneficial and satisfactory intercourse between the 2 Countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual Peace and Harmony ; and having for this desirable end already laid the foundation of Peace and reconciliation, by the Provisional Articles signed at Paris, on the 30th of November, 1782, by the Commissioners empowered on each part ; which Articles were agreed to be inserted in, and to constitute, the Treaty of Peace proposed to be concluded between the Crown of Great Britain and the said United States, but which Treaty was not to be concluded until terms of Peace should be agreed upon between Great Britain and France, and His Britannic Majesty should be ready to conclude such Treaty accordingly ; and the Treaty between Great Britain and France having since been concluded, His Britannic Majesty and the United States of America, in order to carry into full effect the Provisional Articles above-mentioned, according to the tenor thereof, have constituted and appointed, that is to say :

His Britannic Majesty, on his part, David Hartley, Esq., Member of the Parliament of Great Britain ; and the said United States, on their part, John Adams, Esq., late a Commissioner of the United States of America at the Court of Versailles, late Delegate in Congress from the State of Massachusetts, and Chief Justice of the said State, and Minister Plenipotentiary of the said United States to Their High Mightiness the States General of the United Netherlands ; Benjamin Franklin, Esq., late Delegate in Congress from the State of Pennsylvania, President of the Convention of the said State, and Minister Plenipotentiary from the United States of America at the Court of Versailles ; John Jay, Esq., late President of Congress and Chief Justice of the State of New York, and Minister Plenipotentiary from the said United States at the Court of Madrid; to be the Plenipotentiaries for the concluding and signing the present Definitive Treaty: who, after having

[1] The text of the treaty is taken from "British and Foreign State Papers. Compiled by the Librarian and Keeper of the Papers, Foreign Office. London: 1841." Vol. I, Part I, p. 779.

reciprocally communicated their respective Full Powers, have agreed upon and confirmed the following Articles :

Art. I. His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be Free, Sovereign and Independent States; that he treats with them as such; and for himself, his Heirs and Successors, relinquishes all claims to the government, propriety and territorial rights of the same, and every part thereof.

II. And that all disputes which might arise in future on the subject of the Boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their Boundaries, viz., from the North-west Angle of Nova Scotia, viz., that Angle which is formed by a line drawn due North, from the source of St. Croix River to the Highlands, along the said Highlands which divide those Rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the North-westernmost head of Connecticut River ; thence down along the middle of that River to the 45th degree of North latitude ; from whence by a line due West on said latitude until it strikes the River Iroquois or Cataraquy;[1] thence along the middle of the said River into Lake Ontario ; through the middle of said Lake until it strikes the communication by water between that Lake and Lake Erie ; thence along the middle of said communication into Lake Erie ; through the middle of said Lake until it arrives at the water-communication between that Lake and Lake Huron ; thence along the middle of said water-communication into the Lake Huron; thence through the middle of said Lake to the water-communication between that Lake and Lake Superior; thence through Lake Superior, Northward of the Isles Royal and Phelipeaux, to the Long Lake[2]; thence through the middle of said Long Lake, and the water-communication between it and the Lake of the Woods, to the said Lake of the Woods ; thence through the said Lake to the most North-western point thereof, and from thence on a due West course to the River Mississippi ; thence by a line to be drawn along the middle of the said River Mississippi, until it shall intersect the Northermost part of the 31st degree of North latitude : South by a line to be drawn due East from the determination of the line last mentioned, in the latitude of 31 degrees North of the Equator, to the middle of the River Apalachicola or Catahouche ; thence along the middle thereof to its junction with the Flint River ; thence straight to the head of St. Mary's River, and thence down along the middle of St. Mary's River to the Atlantic Ocean : East by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source ; and from its source directly North to the aforesaid Highlands, which divide the Rivers that fall into the Atlantic Ocean from those which fall into the

[1] The early names of the St. Lawrence from Lake Ontario to its junction with the Ottawa.
[2] Rainy Lake.

River St. Lawrence : comprehending all Islands within 20 leagues of any part of the shores of The United States, and lying between lines to be drawn due East from the points where the aforesaid Boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy, and the Atlantic Ocean ; excepting such Islands as now are, or heretofore have been, within the limits of the said Province of Nova Scotia.[1]

III. It is agreed, that the People of The United States shall continue to enjoy unmolested the right to take Fish of every kind on the Grand Bank and on all the other Banks of Newfoundland ; also in the Gulph of St. Lawrence, and at all other places in the Sea, where the Inhabitants of both Countries used at any time heretofore to fish. And also that the Inhabitants of The United States shall have liberty to take fish of every kind on such part of the Coast of Newfoundland as British Fishermen shall use, (but not to dry or cure the same on that Island,) and also on the Coasts, Bays, and Creeks of all other of His Britannic Majesty's Dominions in America ; and that the American Fishermen shall have liberty to dry and cure fish in any of the unsettled Bays, Harbours, and Creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled ; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said Fishermen to dry or cure fish at such Settlement, without a previous agreement for that purpose with the Inhabitants, Proprietors, or Possessors of the ground.

IV. It is agreed that Creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all *bonâ fide* debts heretofore contracted.

V. It is agreed that the Congress shall earnestly recommend it to the Legislatures of the respective States, to provide for the restitution of all estates, rights, and properties which have been confiscated, belonging to real British Subjects : and also of the estates, rights, and properties of Persons resident in Districts in the possession of His Majesty's arms, and who have not borne arms against the said United States : and that Persons of any other description shall have free liberty to go to any part or parts of any of the 13 United States, and therein to remain 12 months unmolested in their endeavours to obtain the restitution of such of their estates, rights and properties as may have been confiscated ; and that Congress shall also earnestly recommend to the several States, a reconsideration and revision of all Acts or Laws regarding the premises, so as to render the said Laws or Acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation which, on the return of the blessings of Peace, should universally prevail. And that Congress shall also earnestly recommend to the several States, that the estates, rights, and properties of such last-mentioned

[1] Compare these boundaries with those given in the Proclamation of Oct. 7th, 1763, p. 163. and previously discussed in the Report from the Board of Trade of June 8th, 1763, pp. 127 et seq. It will be observed that England still retained Canada and East and West Florida, obtained by the Treaty of Feb. 10th, 1763.

Persons shall be restored to them, they refunding to any Persons who may be now in possession the *bonâ fide* price (where any has been given) which such Persons may have paid on purchasing any of the said lands, rights or properties since the confiscation.

And it is agreed that all Persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

VI. That there shall be no future confiscations made, nor any prosecutions commenced against any Person or Persons, for or by reason of the part which he or they may have taken in the present War ; and that no Person shall on that account suffer any future loss or damage either in his person, liberty, or property ; and that those who may be in confinement on such charges at the time of the Ratification of the Treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.[1]

VII. There shall be a firm and perpetual Peace between His Britannic Majesty and the said States, and between the Subjects of the one and the Citizens of the other, wherefore all hostilities both by sea and land shall from henceforth cease : all Prisoners on both sides shall be set at liberty, and His Britannic Majesty shall with all convenient speed, and without causing any destruction, or carrying away any Negroes or other property of the American Inhabitants, withdraw all his Armies, Garrisons, and Fleets from the said United States, and from every Port, Place, and Harbour within the same ; leaving in all Fortifications the American Artillery that may be therein : and shall also order and cause all Archives, Records, Deeds, and Papers belonging to any of the said States, or their Citizens, which in the course of the War may have fallen into the hands of his Officers, to be forthwith restored and delivered to the proper States and Persons to whom they belong.

VIII. The navigation of the River Mississippi, from its source to the Ocean, shall for ever remain free and open to the Subjects of Great Britain, and the Citizens of The United States.

IX. In case it should so happen that any Place or Territory belonging to Great Britain, or to The United States, should have been conquered by the arms of either, from the other, before the arrival of the said Provisional Articles in America, it is agreed that the same shall be restored without difficulty, and without requiring any compensation.

X. The solemn Ratifications of the present Treaty, expedited in good and due form, shall be exchanged between the Contracting Parties in the space of 6 months, or sooner if possible, to be computed from the day of the signature of the present Treaty.

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[1] There was much dispute, alike as to principles and facts, regarding the fulfilment or non-fulfilment of the terms of the treaty, especially the fifth and sixth articles. In consequence of the claims of Britain as to non-fulfilment on the part of the United States, she declined to give up the frontier posts on the great lakes, as required by the seventh article. These were retained until the settlement effected by the Treaty of 1794, which provided for the evacuation of the posts before June 1st, 1796. See British and Foreign State Papers, Vol. I, p. 784.

In witness whereof, we, the Undersigned, their Ministers Plenipotentiary, have in their name, and in virtue of our Full Powers, signed with our Hands the present Definitive Treaty, and caused the Seals of our Arms to be affixed thereto.

Done at Paris, this 3d day of September, in the year of our Lord, 1783.

(L.S.) D. HARTLEY.

(L. S.) JOHN ADAMS.
(L. S.) B. FRANKLIN.
(L. S.) JOHN JAY.

## ADDITIONAL INSTRUCTIONS TO HALDIMAND.[1]

[L. S.]

George R.

Additional Instruction to Our Trusty and Welbeloved Frederick Haldimand Esq$^{r}$ Our Captain General and Governor in Chief of Our Province of Quebec, in America or to the Commander in Chief of the said Province for the time being. Given at Our Court at S$^{t}$ James's the 16$^{th}$ Day of July 1783. In the Twenty third year of our Reign.

C.O. (Quebec 1768-1787, Vol. 1.)

Whereas many of Our Loyal Subjects Inhabitants of the Colonies and Provinces, now the united States of America are desirous of retaining their Allegiance to Us, and of living in our Dominions, and for this purpose are disposed to take up and improve Lands in our Province of Quebec ; and We being desirous to encourage our said Loyal Subjects in such their Intentions, and to testify our approbation of their loyalty to Us, & Obedience to our Government, by alloting Lands for them in our said Province ; And whereas We are also desirous of testifying our approbation of the Bravery and Loyalty of our Forces serving in our said Province, and who may be reduced there, by allowing a certain quantity of Land to such of the Non-Commissioned Officers and private Men of Our said Forces, who are inclined to become settlers therein. It is Our Will and pleasure, that immediately after you shall receive this Our Instruction, you do direct our Surveyor General of Lands for our said Province of Quebec, to admeasure & lay out such a Quantity of Land as you with the advice of our Council shall deem necessary & convenient for the Settlement of our said Loyal Subjects, the non Commissioned Officers & private Men of our Forces which may be reduced in our said Province, who shall be desirous of becoming Settlers therein; such Lands to be divided into distinct Seigneuries or Fiefs, to extend from two to four leagues in front, and from three to five leagues in depth, If situated upon a Navigable River, otherwise to be run square, or in such

[1] Canadian Archives, Q. 26 B, p. 221.

shape and in such quantities, as shall be convenient & practicable—and in each Seigneurie a Glebe to be reserved and laid out in the most convenient spot, to contain not less than 300 nor more than 500 acres;[1] the propriety of which Seigneuries or Fiefs shall be and remain vested in Us, our Heirs and Successors, and you shall allot such parts of the same as shall be applied for by any of our said Loyal Subjects Non-Commissioned Officers & Private Men of our Forces reduced as aforesaid, in the following proportions ; that is to say

To every Master of a Family, One Hundred Acres, and Fifty Acres for each person, of which his Family shall consist

To every single Man Fifty Acres.

To every Non-Commissioned Officer of Our Forces reduced in Quebec Two hundred Acres.

To every private Man reduced as aforesaid One Hundred Acres

And for every Person in their Family Fifty Acres.

The said Lands to be held under Us Our Heirs & Successors, Seigneurs of the Seigneurie or Fief in which the same shall be situated, upon the same terms, acknowledgements and services, as Lands are held in our said Province under the respective Seigneurs holding and possessing Seigneuries, or Fiefs therein ; and reserving to Us our Heirs and Successors, from and after the expiration of Ten years from the Admission of the respective Tenants, a Quit Rent of one half penny P Acre.[2]

It is our further Will and pleasure, that every person within the Meaning of this Our Instruction, upon their making application for Land, shall take the Oaths directed by Law before you or our Commander in Chief for the time being, or some Person by you or him Authorized for that purpose, and shall also at the same time make and subscribe the following declaration, Viz[t] "I A-B. do promise and declare that I will maintain and "defend to the utmost of my power the Authority of the King in his Parlia- "ment as the supreme Legislature of this Province." which Oaths and declaration shall also be taken made and subscribed by every future Tenant before his, her, or their Admission, upon Alienation, descent, Marriage or any other wise howsoever, and upon refusal, the Lands to become revested in Us our Heirs and Successors. And it is our further Will and pleasure, that the expence of laying out and surveying as well the Seigneuries or Fiefs aforesaid as the several Allotments within the same, and of the Deed of Admission shall be paid by the Receiver General of Our Revenue in the said Province of Quebec out of such Monies as shall be in his hands, upon a Certificate from you or Our Commander in Chief for the time being in Council, Oath being made by our Surveyor General to the Account of such

[1] This is the foundation of the subsequent Reserves for religious and educational purposes Earlier forms of such Reserves, however, are found in the American Colonies.

[2] Express instructions were given by Haldimand to Sir John Johnson, who had charge of the settlement of the Loyalists in what is now Eastern Ontario, that the new surveys should not be called townships, or given names, but be numbered as Royal Seigneuries to be held under feudal tenure. See Haldimand Papers, B 65, p. 34.

Expence ; Provided however that only one half of the Usual and accustomed Fees of Office shall be allowed to our said Surveyor General or any other of Our Officers in the said Province entitled thereunto upon any Survey or Allotment made, or upon Admission into any Lands by virtue of this our Instruction

And whereas We have some time since purchased the Seigneurie of Sorel from the then Proprietors,[1] the Lands of which are particularly well adapted for Improvement and Cultivation, and the local situation of the said Seigneurie makes it expedient that the same should be settled by as considerable a number of Inhabitants of approved Loyalty as can be accommodated therein with all possible dispatch.

It is therefore our Will and pleasure that you do cause all such Lands within the same as are undisposed of, to be run out into small allotments, and that you do a[l]lot the same to such of the Non Commissioned Officers and private Men of our Forces, which may be reduced in Our said Province, or such other of Our Loyal Subjects as may be inclined to settle and improve the same, in such proportions as you may Judge the most conducive to their Interest and the more speedy settlement of our said Seigneurie The Lands so allot[t]ed to be held of Us our Heirs and Successors, Seigneurs of Sorel upon the same conditions and under the same reserved rent at the expiration of ten years, as the other Tenants of the Seigneurie now hold their Lands and pay to Us, and also of taking the Oaths and making and subscribing the declaration as herein before is mentioned and directed. The Expence of making the said allotments and Admission thereunto to be also paid and defrayed in like manner as those in the Seigneuries directed to be laid out by this our Instruction.

And it is Our Will and pleasure that a Record be kept in the Office of the Receiver General of our Revenue of every admission into Lands as well as by virtue of this our Instruction, as in cases of future Admission by Alienation or otherwise, a Docquet of which shall be transmitted yearly to Us thro' one of our principal Secretary's of State, and also a Duplicate thereof to Our High Treasurer or the Commissioners of our Treasury for the time being.

G. R.

[1] After considerable negotiation, the Seigniory of Sorel, which commanded the highway between Canada and the southern colonies recently acknowledged as independent, was purchased by Governor Haldimand for the Crown, in 1780, at a cost of £3,000 Stg. See Haldimand Papers, B 55, p. 4.

SESSIONAL PAPER No. 18

[LS.]

George R.

C. O. (Quebec 1768-1787, Vol. I.)

Additional Instruction To Our Trusty and Welbeloved Frederick Haldimand, Captain General & Governor in Chief of Our Province of Quebec in America. Given at Our Court at S$^{t}$ James's the Twenty Sixth Day of May 1785 In the 25$^{th}$ year of Our Reign[1]

Whereas in pursuance of the Powers vested in Us by an Act of Parliament passed during the present Session Intituled "An Act for continuing "for a limited Time, an Act made in the Twenty third Year of the reign "of His present Majesty, Intituled An Act for preventing certain Instruments "from being required from Ships belonging to the United States of America, "and to give to His Majesty for a limited Time certain Powers for the "better carrying on Trade and Commerce between the Subjects of His "Majesty's Dominions and the Inhabitants of the said United States, and "for continuing for a limited Time, an Act made in the 24$^{th}$ year of the reign "of His present Majesty, Intituled an Act to extend the Powers of an Act "made in the Twenty third year of His present Majesty, for giving His "Majesty certain Powers for the better carrying on Trade & Commerce "between the Subjects of His Majesty's Dominions and the Inhabitants of "the United States of America, to the Trade and Commerce of this Kingdom "with the British Colonies and Plantations in America with respect to "certain Articles therein mentioned"[2] We did by and with the Advice of Our Privy Council, by our Order in Council, dated the 8$^{th}$ of last Month, Order and direct, that no Goods, the Growth or Manufacture of the Countries belonging to the United States of America should be imported into Our Province of Quebec by Sea ; It is Our Will and Pleasure that You do in all Things conform yourself to Our said Order in Council.—And Whereas It is necessary to regulate the Intercourse by Land and by Inland Navigation between Our said Province, and the Countries adjoining thereunto, belonging to the United States of America, It is Our Will and Pleasure that You do propose to the Legislative Council of Our said Province, the passing an Ordinance for preventing the carrying of any Peltry out of the said Province into the said Countries, and You are hereby particularly directed and enjoyned to cause the several Laws made for preventing the bringing of any Foreign Rum or Spirits, or, Except from Great Britain, any Goods or Manufacture of any Foreign European Countries, or of Asia, into Our

[1] Canadian Archives, Q. 26 B, p. 226.
[2] This is 25 Geo. III, cap. 5. See "Statutes at Large" Vol. 35, p. 7.

Plantations and Colonies, to be duly and effectually enforced in Our Province of Quebec.[1]

G. R.

[L.S.]

George R.

C. O. (Quebec 1768-1787, Vol. I.)

Additional Instruction To Our Trusty and Welbeloved Frederick Haldimand Esq[r] Our Captain General and Governor in Chief of Our Province of Quebec in America, or to the Commander in Chief of the said Province for the Time being. Given at Our Court at St James's the Twenty fifth Day of July 1785. In the Twenty fifth year of Our Reign.[2]

Whereas it will be for the General Benefit of Our Subjects carrying on the Fishery in the Bay of Chaleure in Our Province of Quebec, that such part of the Beach and Shore of the said Bay, as is ungranted, should be reserved to Us, Our Heirs and Successors ; It is therefore Our Will and pleasure, that you do not in future, direct any Survey to be made or Grant passed for any part of the ungranted Beach or Shore of the said Bay of Chaleure, except such parts thereof as by Our Orders in Council dated the 29[th] of June and 21[st] July 1785, are directed to be granted to John Shoolbred of London Merchant and Mess[rs] Robin Pipon and Company, of the Island of Jersey Merchants, but that the same be reserved to Us, Our Heirs and Successors, together with a sufficient quantity of Wood-Land adjoining thereto necessary for the purpose of carrying on the Fishery ; The Limits of such Wood-Land so to be reserved, to be determined upon and ascertained by You and Our Council for Our said Province of Quebec, in such manner, as from the most Authentick Information shall appear to you and them most Convenient and proper for that purpose ; It is Nevertheless Our Intention, and We do hereby Signify to you Our Will and pleasure, that the Free Use of such Beach or Shore, and of the Wood-Lands so to be reserved shall be allowed by you or any person Authorized by you, to such of Our Subjects as shall resort thither for the purpose of carrying on the Fishery, in such proportions as the Number of Shallops he or they shall respectively employ may require ; provided that if any Fisherman who shall have permission to Occupy any part of the said Beach or Shore and Wood-Land for the purpose of the said Fishery, shall not during any One

[1] The first measure towards regulating commercial relations with the adjoining States, which was passed by the Legislative Council of Quebec, was the Ordinance of 1787, 27 Geo. III, cap. 8. "For the importation of tobacco, pot and pearl ashes, into this province, by the inland communication by Lake Champlain and Sorel." This was followed the succeeding year by the ordinance 28 Geo. III, cap. 1, "Further to regulate the inland Commerce of this Province, and to extend the same." In the latter the prohibition of the export of peltry is introduced, as also the prohibition of the import of rum, spirits, and British manufactured goods, &c., in accordance with the Instruction, which simply supported the general Trade Instructions given to all colonial governors. See Ordinances, 1763–91, pp. 196, 203.

[2] Canadian Archives, Q. 26 B. p. 228.

Season, continue so to Occupy and Employ any part of the said Beach and Shore and Wood-Lands so allotted to him, you or any person authorized by you as above may and shall allow the Use of such part to any other Fisherman who shall apply for the same, for the purpose of carrying on the Fishery—

And whereas it may be necessary to Establish local Regulations to prevent Abuses as well as disputes and Misunderstanding between the Fishermen resorting to the said Beach or Shore, It is Our Will and Pleasure that you by and with the Advice and Consent of Our said Council, do frame such Regulations as to you shall appear necessary to Answer those Salutary purposes, and transmit the same to Us thro' One of Our principal Secretaries of State for Our pleasure therein by the first Opportunity.[1]

G. R.

## HALDIMAND TO NORTH.[2]

Col. Cor. Canada (Quebec) Vol. 22, p. 101.

*Private* QUEBEC October 24th 1783

My Lord

In Addition to the Public Letters which I have had the Honor to write relative to the State of this Province, I have to acquaint you in a private Letter, of Some things which concerns the States adjoining to it. I have nothing new to Communicate with Regard to our Indian Allies. Since the Provisional Treaty has been Made public, several Persons of influence in the State of Vermont have been here at different times, they all agree in describing these People as very Averse to Congress and its Measures, they now insist that in Case Congress should admit their Claim to be the 14th State, upon an exemption from any part of the debts contracted previous to their Admission, as having never been represented in Congress, they could not be bound by it's Acts ; They Seem to have an entire Confidence that in Case Congress Should think of reducing them by Force, the Neighbouring States of New England could never be prevailed upon to assist in the attempt, for which reason they make no Scruple of Setting the State of New York & its Claims of Jurisdiction over them at defiance. They give great encouragement to the Royalists from the Neighbouring Provinces to Settle amongst

relating to the neighbouring States.

Vermont State.

their Quarrel with the State of N. York

[1] The first Ordinance passed relating to these fisheries was that of 28 Geo. III., cap. 6, "For regulating the Fisheries in the River St. Lawrence in the Bays of Gaspé and Chaleurs, on the island of Bonaventure and the opposite shore of Percé." Ordinances Made and passed by the Governor and Legislative Council of the Province of Quebec, 1795, p. 153. also, Ordinances, 1763–91, p. 216.

[2] Canadian Archives, Haldimand Papers, B 56, p. 149. The first portion of this despatch relates to the extensive negotiations, both before and after the Treaty of 1783, between Haldimand and a section of the people of Vermont, chiefly through the agency of Ethan Allen and a few others. Lord North, to whom this despatch is addressed, held office as one of the Secretaries of State from April 2nd, to Dec. 23rd, 1783.

them and have already taken possession of the Lands on the South Side of Lake Champlain to the Boundary Line at the Degree 45.—They made no Scruple of telling me that Vermont must either be annexed to Canada, or become Mistress of it, as it is the only channel by Which the Produce of their Country can be Conveyed to a Market, but they assured Me that they rather Wished the former. They are really a hardy enterprising People, and tho' it was in my Power with the greatest ease during the War to destroy Such of them as Should Settle on Lake Champlain, it was with great difficulty that I could deter them from attempting it, and not till after by experience they found that I was determined to effectuate by force what I could not gain by Admonition.—Tho' I have heard them with Patience, I have assured them that I could not interfere in these Matters as I had the Most positive Orders from the King to do every thing in my power to Conciliate the Affections of the Subjects of the united States to those of Great Britain. The State of New York is Making Settlements in the Same Manner on the opposite Side of the Lake.—The Conduct of these People is not Justified by the Rules of War, for until the Definitive Treaty is made, the Provincial One[1] is no more than preliminaries to a Peace, but Circumstanced as I am, and Willing to Shun every thing which could be construed as an inclination to infringe the Cessation of Hostilities I have thought it best not to oppose them, tho' I foresee great and Mischievous Consequences to this Province from the Settlement which the State of New York is making near the Boundary Lines. The Americans are Settling Captain Hazen, now a Brigad[r] General, with the few Canadians remaining of the Corps upon Lake Champlain, they give them Lands and a Sum of Money proportionate to their Rank and Services. As their Number is Small, the expence will be trifling, but Still these Canadians will be handsomely rewarded, and the Encouragement given to them will have considerable Influence upon the Minds of their Country Men upon Some future Occasion. It will be Totally impossible to prevent frequent Intercourse between them, and the Settlement being So Contiguous to the Boundary Line will afford a Safe and easy Azylum to the Seditious and disaffected of this Country who are very numerous in the Parishes adjoining to Lake Champlain. This Province can only be preserved by bringing back the Canadians to a regular Subordination, and by rendering them useful as a well disciplined Militia—In order to effectuate this, the Authority

The State of N. York settling along Lake Champlain.

bad consequences that will follow

also to the Canadians.

The Canadians to be Governed by

[1] The provisional articles of peace were signed at Paris, Nov. 30th, 1782. British and Foreign State Papers, vol. I, p. 773. The declaration relative to the suspension of hostilities was signed at Versailles Jan. 20th, 1783. Ibid, p. 777.

a well disciplined militia.

of Government Must be Strength[e]ned & not diminished. Be assured My Lord, that every Scheme calculated for the latter purpose, & however disguised, has its Source from the Partizans and Emissaries of the American States. To me personally considered, it Must be a Matter of indifference What form of Government is adopted for this Province, but I would be deficient in that Duty which I owe to the King and the British Nation, if I did not acquaint Your Lordship for His Majesty's Information, that in Order to keep this Country dependent upon Great Britain, no Change Should be Made in the Act of Parliament which regulates it. The Legislature here, has Power to alter Such parts of the French Law as may be found by Experience unadequate to the Circumstances of a Commercial Country and is possessed on the Other Hand with Authority to alter Such parts of the Criminal Law of England as are improper or inapplicable to the State of the Colony. These Alterations ought to be Made with prudence and discretion, and no doubt the Legislative Council will do it at a proper time.—It is an easy Matter to repeal the Quebec Act, but it will be a difficult Task to Substitute another in its Place.—The Saving by having a House of Assembly £12,000 p[r] Annum, which may be the difficiency one Year with another after the Revenues of the Province have been appropriated to Pay the Civil Establishment cannot be put in Competition with the many bad Consequences which would attend the Measure.

The Quebec Bill to be kept in force

House of Assembly how to be supported & Paid

I am the More explicit on this Subject with your Lordship, as being upon the Spot, I know the Views and Motives of the Persons who have been active in setting forth Petitions and creating Jealousies and divisions in the Province. Some wish a form of Government, which by resembling the Republicain one in the Neighbouring States, may prepare the People for an Union with them upon Some future Event; and Many wish to vent their resentment against those who have either prevented or brought to light their Abuse of the Public Money, but much of the future Welfare of the People of this Province or of its utility to Great Britain will depend upon the Arrangements which will be Made in Consequence of the Definitive Treaty, and of the Measures which the Governor will be instructed to pursue.—

Interested views of the People wishing for a Change of Government.

I have the Honor to be with the greatest Respect and Esteem

My Lord

Your Lordship's Most obedient

& Most Humble Serv[t]

FRED: HALDIMAND

The Right Honble Lord North

(original)

Col. Cor.
Canada
Quebec.
Vol. 23
p. 13.

## HALDIMAND TO NORTH.[1]

QUEBEC 6th November 1783.

My Lord

* * * * * *

Your Lordship has already been made acquainted with the general State of this Country, I am told that in the Petition[2] which Some of His Majesty's Antient Subjects have prepared to be presented to Parliament, they lay great Stress upon the Number of Loyalists who are to Settle in the Province, as an Argument in favor of the Repeal of the Quebec Act and for Granting a House of Assembly, but I have great Reason to believe these unfortunate People have Suffered too Much by Committees and Houses of Assembly, to have retained any prepossession in favor of that Mode of Government, and that they have no Reluctance to Live under the Constitution established by Law for this Country. At the Meeting of the Legislative Council I intend to propose and recommend the Passing an Ordinance for the Introduction of the Habeas Corpus Act[3] or Some other Mode for the personal Security, which will put the Liberty of the Subject in that Respect upon the Same footing as in England, and which will remove one of the ill grounded Objections to the Quebec Act, for tho' that Law had never been introduced into the Province, people were taught to believe that the Quebec Act had deprived the Inhabitants of the benefit of it.—

I have the Honor to be with the greatest Respect and Esteem

My Lord
Your Lordship's Most Obedient
and Most Humble Servant

FRED: HALDIMAND

The Right Honorable Lord North
(original)

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[1] Canadian Archives, Haldimand Papers, B 56, p. 170. The first part of this despatch deals with the preparations for the settlement of the Loyalists.

[2] The petition here referred to is dated 30th Sept., 1783, C.O. 42, v. 15, p. 29. It is the first form of that afterwards presented and dated 24th Nov., 1784. See. p. 742.

[3] On Feb. 7th, 1782, in the Legislative Council, "Mr. Allsopp moves for leave to bring in three Ordinances in conformity to the 12th & 13th Articles of his Majesty's Instructions." The first related to English Law and trial by jury in commercial matters; the second authorized and required the judges of all the Courts to issue writs of Habeas Corpus according to the rules and laws of England; the third provided for the suspension of the second ordinance for a year. See Minutes of Leg. Council, v. D., p. 123. This motion, however, was defeated and immediately afterwards Allsopp was suspended from the Council on the grounds of his protest of 1780. This protest was made, 6th March, 1780, against the address to the Governor carried by the majority in Council, and supporting him in his refusal to comply with the instructions from the Home Government, *re* improvements in the Court of Appeal. (See p. 706.) It is an interesting document setting forth, with concrete details, those practical consequences of the introduction of the Quebec Act which became the occasion for such vigourous protests from 1784 to the passing of the Constitutional Act in 1791. The Protest is given in full in Minutes of the Leg. Council, vol. D., p. 81.

SESSIONAL PAPER No. 18

## FINLAY TO NEPEAN.[1]

QUEBEC 22d October 1784.

SIR,

The Advocates for a House of Assembly in this Province take it for granted that the people in general wish to be represented ; but that is only a guess, for I will venture to affirm that not a Canadian landholder in fifty ever once thought on the subject and were it to be proposed to him, he would readily declare his incapacity to Judge of the matter. Although the Canadian Peasants are far from being a stupid race, they are at present an ignorant people, from want of instruction—not a man in five hundred among them can read ; perhaps it has been the Policy of the Clergy to keep them in the dark, as it is a favourite tenet with the Roman Catholic Priests, ignorance is the mother of devotion. The Females in this Country have great advantage over the males in point of Education. The Sisters of the Congregation, or grey Sisters as they are called, are settled in the Country Parishes here and there to teach girls to read, write, sew, & knit Stockings : there's only a few of that Sisterhood—they are the most useful of any of the religious orders in Canada.

Before we think of a house of Assembly for this Country, let us lay a foundation for useful knowledge to fit the people to Judge of their Situation, and deliberate for the future well-being of the Province. The first step towards this desireable end, is to have a free School in every Parish—Let the schoolmasters be English if we would make Englishmen of the Canadians; let the Masters be Roman Catholics if it is necessary, for perhaps the people, at the instigation of the Priests, would not put their children under the tuition of a Protestant.

The natural born subjects say, that they settled in Canada under the Kings promise to call a house of Assembly as soon as the circumstances of the Province would permit. The time is now come, say they ; they likewise state many priviledges that they hoped to enjoy on the faith of the Royal proclamation, of which they were deprived by the Quebec Act.

It is not yet ascertain'd that the people wish for a house of Assembly! —Is it not the very essence of representation that the members of the

[1] Canadian Archives, Q 23, p. 441. Mr. Hugh Finlay, as already indicated (see note 1, p. 708) was Deputy Postmaster General and a member of the Council. Evan, afterwards Sir Evan Nepean was appointed the first Permanent Under Secretary of State for the Home Department, in 1782. This office was created in consequence of the readjustment of a number of offices of state. The office of Secretary of State for the Colonies, created in 1768, was abolished along with the Board of Trade and Plantations, in 1782, under the Act of 22nd Geo. III, cap. 82, the preamble to which states: "Whereas his Majesty, from his paternal regard to the welfare of his faithful people, from his desire to discharge the debt on his civil list, without any new burthen to the publick, for preventing the growth of a like debt for the future, as well as for introducing a better order and economy in the civil list establishments, and for the better security of the liberty and independency of parliament, has been pleased to order, that the office commonly called or known by the name of Third Secretary of State, or Secretary of State for the Colonies; the office or establishment commonly known by the name and description of The Board of Trade and Plantations; the offices of lords of police in Scotland;" &c., &c., "shall be, and are hereby utterly suppressed, abolished, and taken away." Statutes at Large, vol. 34, p. 143. The former duties of the Board of Trade and Plantations were to be executed by a Committee of the Privy Council. See sec. 15 of the Act. The work of the Colonial Secretary was transferred to the Home Department, formerly the Southern Department, in which there was also a Parliamentary Under Secretary.

house be chosen by the free and uncontrolled voices of the people in their districts? The Quebec Act gives full power and authority to His Majestys Legislative Council to make Laws and grant all manner of Priviledges to render His Majestys subjects in Canada free and happy; if they are not actually so, the Legislative Council alone is to blame, not the Quebec Act, for by it the Council may alter even the Criminal Law.

Before any Act passes giving the Canadians a house of Assembly, let us be sure that it will be agreeable to a Majority of the landholders—Let the nature of free representation be set forth, let the duty of a representative be explained, and convey a proper idea of the powers a house will have to frame laws, and lay taxes : this necessary information ought to be drawn up in plain clear terms, and read to the people every sunday for three months by the curate of each Parish immediately after divine service, that the inhabitants or country people, may turn it in their thoughts, consult among themselves and advise with the most sensible in the Parish, be they French or English, to enable them to come to a determination concerning this matter.

Let those who assert that it is necessary for the wellbeing of the people that the habitants have a share in the Government, do their best endeavours to show them by solid arguments that it will be for their good—At the end of three months, or six if more time is requisite, let the Captains of Militia in presence of the Curate and four of the most notable in the Parish take the voices of the people for House, or no House? If a majority throughout the Province say House, grant their desire—if they say no house—the British Parliament will not force that form of Government upon them : the ancient subjects, (a small proportion of the people) ought not unreasonably to insist on that which a majority of their fellow Citizens refuse after mature deliberation.

When the people, by means of education, become more enlightened, they will probably wish for an alteration of the present system—whenever that desire appears let the alteration be made—in the mean time let it always be held up that a house will be called whenever a majority of the people apply for it.

I conceive, that whenever taxation is mentioned, the Peasant will reject the idea of a house, from his narrow way of thinking, and attachment to money. Were a house to be forced on them, and that house lay taxes to defray the expence of Government and a thousand useful purposes which the English Members (if any English there should be chosen) would be continually projecting, they would deem themselves oppressed and probably wish to join the American confederacy, not possessing knowledge enough to foresee the evil consequences of that Junction. The Enemys of Government (and there never is wanting turbulent people in all Countrys) would make a handle of their discontentment and keep up a spirit which they would hope to turn to account one day or other.

SESSIONAL PAPER No. 18

We at this moment enjoy all the benefits arising from the Habeas corpus act.[1]

The Legislative Council have repeatedly refused to grant Jurys in civil cases. Say the people, there is no Judge on the Bench capable of determining a Commercial point so well as a Jury of Merchants, nay 'tis absolutely impossible that Right can be done to the subject by Judges not bred to the Law, under that anticommercial ill-understood System la coutume de Paris, without the intervention of Juries—Jurys are an Englishman's birth right.—Why refuse optional Juries? asks an old subject—because, answer the Judges, they are too burthensome on the people. No replys the Englishman, Jurys are not burthensome where the Courts are properly regulated by terms, but here you have weekly Courts, as inconvenient as injurious since they tend by their frequency to deprive the Subject of trial by Jury, a right which an Englishman never can give up, and which His Majesty was pleased by His 13th Instruction strenuously to recommend, but the Judges who have had most influence with our Governors have found means to prevent our having Jurys in the Civil Courts, as they have been looked on as a pernicious check on the power of the Bench.[2]

It has been remark'd that men never wished for more power than the Law gives them, unless they intend to use it—On trials for Damages, the want of Juries may be severely felt.

May I, Sir, refer you to a sensible man Mr. Grant[3] of St. Roc, (a Member of the Legislative Council) for ample information concerning our Courts of Justice—he lives at No 42 Newman street.

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[1] In his speech to the Legislative Council at the opening of the session, on March 22nd, 1784 Governor Haldimand stated that he had regretted that the condition of public affairs had not hitherto permitted of his recommending an Ordinance for the better security of the liberty of the subject, now, however, he would present one to them. See Minutes of Leg. Council, v. D. p. 144. While this ordinance was being considered, Mr. Grant of St. Roc moved that the following clause should be incorporated: "And it shall be clearly understood at all times hereafter, that the Common and Statute Law of England in as far as the same is favourable and productive of personal Liberty, Safety and Security is the Right of all His Majesty's faithful Subjects in this province; and as such shall be the Rule whereby to decide every case and situation not provided for by the present Ordinance." Ibid. p. 168. This was defeated by nine to seven. But inasmuch as the preamble to the ordinance recited the 13th article of the Instructions to the Governor the same minority supported a motion, introduced by Mr. Finlay, to the effect that the ordinance as passed did not fulfil the conditions of the 13th article. The minority consisted of Messrs. Grant, DeLery, Collins, Levesque, Dunn, Finlay and Lt.-Gov. Hamilton; and each of these, except Mr. Collins, recorded his dissent from the vote of the majority. See ibid. pp. 170 and 172–6. The Ordinance introduced by Haldimand and passed was 24 Geo. III, cap. 1. "For securing the Liberty of the Subject, and for the prevention of Imprisonments out of this Province." Ordinances made and passed by the Governor, &c., p. 57. See also Ordinances 1763–91, p. 139.

[2] Repeated efforts, extending from 1777, had been made to secure an ordinance granting the right of trial by jury in civil cases, but not until the departure of Haldimand, Nov. 16th, 1784, was there any prospect of its being passed. Under Lt.-Governor Hamilton's administration, however, in the spring of 1785, this feature was embodied in the Ordinance for Regulating the Proceedings of the Civil Courts. See below, p. 780.

[3] William Grant, 1752–1832. He was Attorney General for Quebec Province 1775–1777; appointed to the Legislative Council, August, 1777; also Deputy Receiver General of the Province, 1777–1784. Born in Scotland, he graduated at Aberdeen University and afterwards studied Civil Law at Leyden. He came to Canada, 1775, and took part in the defence of Quebec; returned to England, but kept up a close connection with his friends in Canada. Under the auspices of Pitt, he entered the British Parliament in 1791 and assisted in the preparation of the Constitutional Act for Canada. Solicitor General under Pitt, 1799, and knighted the same year; Master of the Rolls, 1801–1817. He was regarded by all parties as a statesman and lawyer of exceptional ability and fairness. See Dictionary of National Biography.

It has been represented that poor people cannot afford to attend as Jurors on civil causes—Let them be paid and they will cheerfully serve—'tis but reasonable that the contending partys should pay.

I have taken the liberty to trouble you with this letter at the desire of my friend Governor Skene.[1]

I have the honor to be Sir

Your most obedient and very humble
Servant

Evan Nepean Esq[r] HUGH FINLAY
(original)

## PETITION FOR HOUSE OF ASSEMBLY.[2]

## TO THE KING'S MOST EXCELLENT MAJESTY.

The humble Petition of Your Majesty's Ancient and New Subjects Inhabitants of the Province of Quebec.

MAY IT PLEASE YOUR MAJESTY.

AFTER the Conquest of the Province of Canada by the Arms of Great Britain, Your Petitioners in compliance with Your Majesty's gracious and

[1] Philip Skene, 1725–1810. He served in America under Howe, Amherst, and Albemarle, 1756–9. Received a large land grant on Lake Champlain, and founded the town of Skenesborough. Was named Governor of Crown Point and Ticonderoga. Served with Burgoyne and returned to England after the Revolutionary War. See Appleton's Encyclopedia of American Biography.

[2] Canadian Archives. Q 24-1, p. 1. Given also in Q 27-1, p. 431. The first form of this petition was drawn up and dated 30th September, 1783, and is given in Canadian Archives, C.O. 42, vol. 15, p. 29. This was the petition from the ancient subjects only, which Mr. Wm. Dummer Powell, at that time a lawyer in Montreal, took over to Britain. His arrival with the petition is referred to in a letter of Sydney to Haldimand, dated 8th April, 1784. Sydney indicates his unwillingness to make any concession to those in favour of changes in the administration of Canada. See B. 45, p. 131. It is interesting to compare the earlier form of the petition with that of the following year, given here. There is omitted in the latter, for instance, the following interesting paragraph with reference to the temporary nature of the policy which dictated the Quebec Act and the other measures of the session of 1774 on the eve of the American Revolution. "Your Petitioners wish to forget, they forbear to animadvert upon the Constitution and the Government they have lived under since the passing of the Quebec Bill, whatever Reasons or Policy of State, whatever Idea of necessity at that critical Period might have pressed upon this People such an Act and Government so contrary to the growth, the Welfare and the Interest of a commercial state, so adverse to the Liberty of Your Majesty's Subjects in Quebec, so repugnant to the Royal assurances of a limited and mixed Government, whatever such Necessities or Reasons of state might then have been, your Petitioners presume they can now no longer have Existence to support that Act nor that any Consideration adverse to the true Principles of the English Constitution will prevail with Your Majesty to withhold from Your Petitioners and Your Subjects of this Province that Government, that Liberty, Safety and Comfort, that infinite source of Prosperity and Happiness which, under Your Majesty's Royal Word, have been the Means to induce their Residence in the Province of Quebec. Your Petitioners approach Your Majesty with the utmost respect, loyalty and attachment to intreat from the Crown and the Parliament of Great Britain a Repeal of the Quebec Act and the Establishment of a Government formed to move and exist upon the Principles which have raised and do support the English Constitution." Evidently it was recognized that the memory of that which was desirable to forget, should not be too conspicuously refreshed. Another feature which was dropped from the 12th recommendation in the first form of the petition, was the somewhat strenuously worded prayer that "With the utmost fervency Your Petitioners implore that Your Majesty will be Graciously pleased to appoint to the Court, and place on the Seats of Justice, Men of jurisprudent Learning." This had reference to the fact that the judges of the province, at that time, were none of them men trained in the Law, but were more noted as the political confidants and advisers of the Governor, by whom they were appointed and supported, and for whom they controlled a majority in the Council. The wise omission of all such references from the final form of the petition did not, however, prevent the public outbreak during the next few years of strong arraignments of the administration of justice on both legal and political grounds. The 14th Article of the final petition was added to meet the new situation resulting from the recognition of the independence to the late colonies.

royal Proclamation, bearing date the 7th day of October 1763,[1] Settled and became established, in the New acquired Colony of Quebec ; in the full reliance on the faith of the Crown of Great Britain, as expressed in that Proclamation, for the enjoyment of those Laws, that Freedom and Security in Canada, which the Principles of the English Constitution afforded, in every part of the British Dominions in America. YOUR PETITIONERS and the Inhabitants of the Province, have chearfully on every occasion, obeyed the Controuling power of the Parliament of Great Britain, and with patience have suffered, during a period of Anarchy and War, rather than wound Your Majesty's feelings, or embarrass the Throne with Remonstrances and Petitions, at a time when the safety of the Nation, made sacred every moment of Public deliberation. The Actions and Conduct of Your Petitioners when truly represented, will best express to Your Majesty, the Sincerity of their Loyalty and Attachment to the Crown and Government of Great Britain.

YOUR PETITIONERS look with Concern on the burthen of Great Britain, and with great Pain and Commiseration they see the distresses of Your Majesty's loyal Subjects, who, driven from their Estates, Wealth, and Possessions are daily taking Shelter in this British Colony ; though their unsettled and distressed Situation, may for the present hinder them from bringing forward their Petitions and their Claims ; Your Majesty will readily perceive that a Government similar or Superior, to that under which they were born, had lived, and were happy, must be considered by those Your Majesty's unfortunate Subjects as an Affectionate proof of Your Majesty's Paternal Care and Regard for them ; and the first Comfort which Your Majesty in relief to their Distresses can now grant : And the more so, as it will be a Blessing not merely granted to them, but extended to their Children and Posterity. YOUR PETITIONERS fully persuaded that the Welfare and Happiness of Your Majesty's Subjects, are objects of Your Majesty's serious, and benign Consideration—beg leave to lay their Petition at the foot of the Throne and ardently to request Your Majesty's Interposition for the Repeal of the Quebec Bill ; allowing such Priviledges as are already granted to the Roman Catholick Religion ; as being inadequate to the Government of this extensive Province ; the Cause of much Confusion in our Laws, and fraught with trouble and uneasiness to Your Majesty's loyal Subjects here. And that Your Majesty will be pleased to Concur in establishing your affectionate Subjects of this Province, in the full Enjoyment, of their civil Rights as British Subjects ; and in granting them a Free, Elective House of Assembly. In these hopes they humbly presume to Suggest, that Clauses of the following Import, may be inserted in the Act of Parliament, which shall be made to Confirm a free Constitution to this Country.

1st THAT the House of Representatives or Assembly,—be chosen by the Parishes, Towns and Districts of the Province, to be Composed of

[1] See p. 163.

Your Majesty's Old and New Subjects, in such manner as to Your Majesty's Wisdom may seem most proper, that the Assembly be triennial, and the Members elected every three Years.[1]

2d THAT the Council consist of not less than Thirty Members and in case of Division on any measure before them, that no Act shall be passed, unless at least Twelve Members agree to carry the Vote. That the appointment of the Members, may be during their residence in the Province, and for Life; yet subject to temporary leave of Absence, as mentioned in the 11th Article ; And that they serve as Councellors, without Fee or Reward.

3d THAT the Criminal Laws of England be continued, as at present established by the Quebec Act.

4th THAT the ancient Laws and Customs of this Country, respecting landed Estates, Marriage Settlements, Inheritances and Dowers, be continued ; yet subject to be altered by the Legislature of Quebec ; And that Owners may alienate by Will, as provided by the 10th Section of the Quebec Bill.

5th THAT the Commercial Laws of England, be declared to be the Laws of this Province, in all Matters of Trade and Commerce, subject to be Changed by the Legislature of Quebec, as in the preceeding Article.

6th THAT the Habeas Corpus Act, the 31st Charles 2d be made part of the Constitution of this Country.

7th THAT Optional Juries be granted, on all Trials in Courts of Original Jurisdiction. That they be regularly Baloted for, and a Pannel formed as in England ; either in the Case of an ordinary or a Special Jury, at the option of the Party applying for the same, And that Nine Members out of the Twelve, may in Civil Causes, be sufficient to Return Verdicts, subject to be Modified by the Legislature of Quebec, as in the 4th Article.

8th THAT the Sheriffs be elected by the House of Assembly, and approved and Commissioned by the Governor, at the Annual meeting of the Legislature. That they hold their Appointment during the period elected for, and their good Behaviour ; and that they find reasonable Security, for a faithful discharge of their Duty.

9th THAT no Officer of the Civil Government, Judge or Minister of Justice, be suspended by the Governor or Commander in Chief for the time ; from the Honours, Duties, Salaries or Emoluments, of his Appointment ; but with the advice and Consent of Your Majesty's Council, for the Affairs of the Province ; which Suspension shall not Continue, after the Annual Sitting of the Council ; unless it be approved by the same. The cause of Complaint if approved, to be thereafter reported to Your Majesty, for Hearing and Judgment thereon.

10th THAT no New Office be Created, by the Governor or Commander in Chief for the time ; but with the Advice and Consent of Your Majesty's

[1] For a more detailed plan of the proposed Assembly, drawn up by the Committees of Quebec and Montreal at the same time as this petition, see the document which follows this, p. 753.

said Council and be approved at their Annual Meeting, as in the preceeding Article.

11th THAT all Offices of Trust be executed, by the Principal in the Appointment ; unless by leave of Absence from the Governor, with advice and Consent of his Council ; which leave of Absence, shall not extend to more than Twelve Months, or be renewed by the Governor, but with the Approbation of the Council, at the Annual Session.

12th THAT Judges be appointed, to preside in the Courts of the Province ; to hold their places during Life, or their good Behaviour, and that they be rewarded with Sufficient Salaries, so as to confine them to the functions of administering Justice. That every Cause of Accusation for a Removal, proceeding from the Governor, shall follow the Rule laid down in the 9th Article. And every Cause of Accusation for a Removal, on the Part of the Public, shall proceed from the House of Assembly, and be heard by the Council ; which, if well founded, shall operate a Suspension ; and in either Case, be decided in Appeal and Report to Your Majesty.

13th THAT Appeals from the Courts of Justice in this Province to the Crown, be made to a Board of Council, or Court of Appeals, composed of the Right Hoñble The Lord Chancellor and the Judges of the Courts of Westminster Hall.

14th YOUR PETITIONERS beg leave, humbly to Represent to Your Majesty ; that from their Proximity to the United States, who from Situation and Climate, have many advantages over them, the Internal Regulations for promoting the Trade, Agriculture and Commerce, of this Province ; are now become more intricate and difficult ; and will require great Care and Attention, on the part of the Legislature here ; to watch over the Interests of this Country. They therefore request, that the Assembly may have the Power, of laying the Taxes and Duties, necessary for defraying the Expences of the Civil Government of the Province. And for that purpose, that the Laws now existing, laying Taxes and Duties to be levied in the Province, may be repealed.

SUCH MAY IT PLEASE YOUR MAJESTY are the Intreaties and Prayers of Your loyal Subjects ; and in full Confidence they trust, that Your Majesty will relieve them from the Anarchy and Confusion, which at present prevail, in the Laws and Courts of Justice of the Province, by which, their Real Property is rendered insecure, Trade is clogged, and that good Faith, which ought, and would subsist among the People, and which is the Life and Support of Commerce, is totally destroyed. And be Graciously pleased to Secure to them, a Constitution and Government, on such fixed, and liberal Principles, as may promote the desire Your Affectionate Subjects of this Province have, of rendering this Mutilated Colony, a bright Gem in the Imperial Crown of Great Britain. And that may call on the present Generation, for their unceasing Acknowledgements and Gratitude. And upon the future, to feel as the present, that the Security and Happiness of

the People and Province of Quebec ; depend on an Union with, and Submission to, the Crown and Government of Great Britain.

In these pleasing hopes Your Petitioners as in Duty bound will ever pray &c. &c. &c.[1]

Quebec 24th November 1784
(Signed)

| | |
|---|---|
| John Munro | John Crawford |
| John MacDonald | John Johnston |
| Alexr ffraser | Alexr MacPherson |
| Andrew Doe | Alexr Macpherson |
| James Brymore | John Macpherson |

[1] On the 22nd of April, during the session of the Legislative Council, Mr. Grant made the following motion:—"I move that a Committee of this Legislative Council be immediately named to take into Consideration, and draw up An humble Petition to His Majesty and Parliament, praying, That an Assembly, or such other constitutional *elective Body* be called to represent the people of this province; and in such manner and number, and so composed as to His Majesty in His Wisdom shall seem fit: In which Assembly, or elective Body, together with His Majesty's Council and Governor, shall be vested the usual legislative powers of an English Colonial Govern.-ment. And I move that the following among other Reasons may be suggested in support of the said Petition, and this Motion." These reasons may be summarized as follows; 1st. As the Quebec Act prohibits the Council from levying taxes, except to a very limited extent for inhabitants of towns and districts, an elective Assembly is necessary to adequately provide for the needs of the Province. 2nd. For 24 years the Canadian people have been led to expect the establishment of Constitutional Government. 3rd. These expectations probably explain why the power of local taxation has not been called for, with the result that local improvements, such as roads, have either been maintained by the Crown or have fallen into decay. 4th. An Assembly with the power of taxation is the more necessary that the King, by the Act of 18 Geo. III, cap. 12, has relinquished the right of internal taxation in the colonies. 5th. That the power of raising revenue for the general welfare of the people is as essential to free government and the rights of British subjects as personal liberty and security. 6th. Representative Government is necessary in view of the immigration of the Loyalists and this is an opportune period to petition for it. 7th. The same petition should pray the King to direct trial by jury in civil cases, where desired by either party, the present system being anomalous. 8th. The extraordinary powers given to the Legislative Council by the 8th, 10th, 11th, & 14th sections of the Quebec Act, while its members are entirely dependent for their seats on the pleasure of the Crown, nine of them forming a quorum, and hence five having the power to conduct the business of the Province. See Minutes of Leg. Council, v. D., p. 179. The discussion on this motion was delayed by the order to have it translated into French. In the meantime La Corne St. Luc moved for an address to the Governor, expressing satisfaction with the Quebec Act and praying for its continuance. This was carried on a division of 12 to 5. As ultimately presented, the address, with Haldimand's reply, was as follows:—"May it please Your Excellency. We, the Members of the Legislative Council take the Liberty to represent to Your Excellency our Gratitude for His Majesty's paternal Goodness in the gracious Protection he has granted to the people of this province during the Troubles which have distracted the greatest part of the Continent of North America. At the same time We take the Opportunity of renewing our Solicitations to Your Excellency that You will be pleased to convey to His Majesty the Sense we have of the great Advantage which has accrued to the people of this province, and to the tranquility and safety of it, from the Act of parliament which was passed in their favour the 14th year of His Majesty's Reign; the continuation of which Law, the Result of that generous and tolerating Spirit which distinguishes the British Nation, will be the means of rendering the people of this province indissolubly attached to the Mother Country, and happy in the Enjoyment of their Religion, Laws and Liberties.
(Signed) Henry Hamilton President."

"The Governor's Answer—

Gentlemen. I will transmit your Address to the Secretary of State, to be laid before His Majesty. The Ordinance passed this Sessions for securing the personal Liberty of the Subject, will contribute to remove the prejudices of the misguided against the Act of parliament which regulates the province, and at the same time will be the means to frustrate the attempts of the malicious and designing to create Confusion and Dissention within it. (Signed) Fred. Haldimand." Ibid. p. 200.

The vigour of this reply was doubtless heightened by the fact that the five members who voted against the Address, recorded their reasons of dissent. These were Lt.-Gov. Hamilton, Wm. Grant, Hugh Finlay, F. Levesque, and J. G. C. DeLery. They all considered that the changed conditions resulting from the independence of the late Colonies and the arrival of the Loyalists required changes in the Quebec Act and a more liberal and representative form of government. See ibid. pp. 188–196.

Wm Hemley
Joseph Musgrave
Robert Urquhart
John Coops
Wm Miller
J. Stewart
Robert Sandeson
James Stiveinson
James Collum
John Bell
John Thomson
Robt Russel
William Russel
John Fraser
Patk Sulavan
George Harrow
John Henderson
Donald Smith
Robert Gorrie
James Currie
Jas Duncanson
Elias Salomon
Alexr Spark
Wm Lindsay Jr
Wm Person
Luke Gambee
John Justus Diehl
John Urquhart
John Buchanan
Wm Thomas
John Chillas
William Grant
George Jinkins
Willm Webb
John Robinson
Jas Gibbons
John McKutcheon
Jas Quin
John Saul
Wm Mackenzie
John Ross
Henry Cull
Wm Hay
Alexr Wallace
Jeffry Manning
Andrew Martin
John Young
James Sherrar
Malcom Mullun
Patrick Codey
Louis Ratti
Jno Jones
Josep Mather
John Daly
Johann friedrih
Jacob Stugman
John King
John Gawler
John Hay
Lauch Smith
James McNeill
Jas Sinclair
Geo. Sinclair
James Swan
Zachy MacAulay
Cuthbert Grant
Daniel Fraser
John Pagan
Meredith Wills
John Rodhe
Alexr Johnston
John Johnston
Robt Haddan
John Ayton
John Lynd
Henry Crebassa
Thomas Powis
Robert Woolsey
Robert Keating
Hugh Jameson
Jno Blackwood Jur
Wm Burns
Fridrick Glackemeyer
Miles Prenties
C. J. Tanswell
Thomas Grahame
Ans Grant
Jas Grant
Jas Greig
Isaac Roberts

Jn° Jones
Sam[l] Casey
Tho[s] Bennett
William Laing
Da Cameron
W[m] Garrett
Godfrey King
Sam[l] Jefferys
Dunccan Mkensy
John Simpson
John Potts
Stephen Curtis
Mathew Lymburner
David Barclay
Thomas Sketchley
A. Ferguson
William Macnider
Roderic Fraser
Tho[s] Cary
Alex[r] Ross
David Ross
J. Buchanan
Rob[t] M[c]fie
Will[m] Ritchie
Thom[s] Bissbrown
Robert Stewart
Matthew Stewart
Hyam Myers
Math[w] Macnider
James Bowman
Charles Grant
Adam Lymburner
Rob[t] Willcocks
John Antrobus
Jn° Painter
John Jones
William Wilson
Al. Wilson
G. Stuart
Rich[d] Dalton
Jacob Rowe
John Munro
Thomas M[c]Cord
John M[c]Cord
John Lampard
Anthony Vanfelson
W Roxburgh
Fred: Petry
Alex. Greig
P. Pollock
John M[c]Cord Jun[r]
Jas. Sinclair
James Woods
George Gillmore
Robert Ritchie
Hugh Ritchie
John Ritchie
Hugh Merchall
James Johnston
I. Fraser
John Buchanan
Robert Lester
W[m] Lindsay
Constant Freeman
Ezekiel Freeman
John Walter
W[m] Vonden Velden
Nath. Taylor
Jn° Taylor
Edward O'Hara
David Schoolbred
Tho[s] Watt
A. Aylwin
C. Danbridge
Jn° Purss
Malcolm ffraser
William Bell
William Wilson
Ria Grey
Samuel Harris
Andrew Colly
John Hay
William Carss
David Morris
Jams Gordon
John T. Doyle
William Lane
William Crouch
W[l] Caw
Daniel Blunt

SESSIONAL PAPER No. 18

Rendel M$^{c}$Doneld
Patrick Ledwith
Daniel Duncan
Hugh Rigby
John Reid
John Brook
Alexader annod
Rich$^{d}$ Dunn
Moses Brockett
John Evans
John Richardson
Richard Janneyson
Francis Desrocher
W: Ward
Sam$^{l}$ Henry
John Stanley
John Greig
William Moore
John Salmon
B. V. Clench
Jn$^{o}$ Salmon
John Dormer
Hugh Fraser
Joseph Fraser
John Walsh
Alex$^{r}$ M$^{c}$Donald
Alex$^{r}$ Iver
Charles Daly Jun$^{r}$
W. Cameron
Edward Mackay
Cha Stewart
Isaac Gay

Inhabitants of Three Rivers.

Aaron Hart
Sam Sills
William Nelson
Moses Hart
John Macpherson
John Fraser
Philip Lloyd
John Sills
Eze$^{l}$ Hart
R. Mell

William Miller
John Fraser
John Rodolf Smith
Charles Smith
David Jacobs
Sam$^{l}$ Pepper
James Galbraith
W$^{m}$ Brown
Ja$^{s}$ Melvin
John Woolsey
Rob$^{t}$ Russel
W Courcy Gill
Philip Sullivan
Dunacan MDonald
James Davidson
Malcolm Fraser
I. M. Bliss
Robert Jones
Thomas Prendergast
James Day
Joseph Ray
George Rapper
John M$^{c}$Bain

*District of Montreal*

Jacob Jordan
James M$^{c}$Gill
James Finlay
Benj$^{n}$ Frobisher
Nicholas Bayard
William Kay
Alex$^{r}$ Henry
J. Blackwood
Geo: McBeath

Jacob Ruhn
Fran Winton
John Forsyth
John Franks
William Harkness
W$^{m}$ Griffin
Rosseter Hoyle
Robert Griffin
Abraham Hart

Jn° Askwith
William Allen
Joseph Frobisher
Hugh Ross
Ancus Cameron
Alexander Hay
Charles Paterson
Sam[l] Birnie
James Dyer White
J. M[c]Kinnsy
Felix Graham
John Gregory
J. Grant
David M[c]Crae
John Lilly
Geo. Selby
W. Maitland
James Caldwell
R. Sym
Robert Jones
William Taylor
F. Bleakley
Jn° Bell
Alexander Campbell
I. R. Symes
Rob[t] M[c]Grigor
James Laing
R. Gruet
David Davis
John Russel
Thomas Sullivan
Rich[d] Dowie
(Oliver Church Late
Lieu[t] 2[d] BKRR
New York)
(John Dusenberg Ens[n]
Late Loyal Rangers)
samuel Burch
Levai Michaels
Henry J. Jessup
Isaac H[t] Abrams
Isaac Hall
John Campbell
Donald Fisher
Jos. Forsyth
Samuel Gerrard
Colin Hamilton
Laurence Taaffe
W[m] H[y] M[c]Neill
Charles Smyth
Angus Macdonald
John Smith
D[d] Lukin
James Cameron
G. Young
R. Cruickshank
John Rowand
E. Edwards
Thomas Forsyth
D. Sutherland
James Grant
Allan Paterson
John Ross
Levy Solomons
Levy Solomon Jun[r]
John Turner & Sons
Uriah Judah
Ch[y]: Cramer
Alex[r] Henry
Adam scott
Alex[r] Mabbut
Jonas schindler
William Hunter
Alex[r] Walmsley
Henry Edge
Allex[r] Martin
James M[c]Nabb
James Ruott
Thomas M[c]Murray
Isaac Judah
Sam[l] Judah
Laurence Costille
Saint Louis
Henry Campbell
John Bethune
Nom[d] MacLeod
James Mackenzie
W[m] Murray
James Finlay Jun[r]
J. Symington

(H. Spencer Lieut late 2d BK. R.R. N. York)
Richd Pollard
John Grant
John McKindlay
Wm Packer
John McGill
Fras Badgley
Peter Pond
Thos Burn
Davd Alexr Grant
Alexr Cooper
Richd McNeall
Alexr Fraser
Thomas Frobisher
John Ogilvy
Andrew Todd
Thomas Corry
Walr Mason
Gor. Moore
R. J. Wilkinson
James Noel
Charles Lilly
Duncan Fisher
John Ridley
Alexr Campbell
John Milroy
Joseph Hamly
Saml White
Saml Douney
C. Rolffs
Wm Hall
Geo. McDougall
Robert Lindsay
Jas Robertson
Thos Brekenridge
John Foulis
Francis Crooks
Geo. Edw. Young
George Aird
Joseph Provan
Simon McTavish
John Lawrence
Saml Embury
S. Anderson
J. Pangman
John Tobias Deluc
Cuthbert Grant
Robert Grant
Thos Nadenhuvet
James Foulis
William Bruce
John Macnamara
Daniel Sullivan
Finlay Fisher
John Stewart
Daniel Mackenzie
Joseph Anderson
Paul Heck
Robert Thomson
Samuel Heck
Alexr Milmine
Robert Smith
William Smith
Jacob Tyler
Chars Grimesly
Wm Grimesly
David Ross
Abram Holmes
William Fraser
William Hassall
David Ray
Thomas Busby Senr
Thomas Busby Junr
William England
Conrad Marsteller
William Creighton
Hugh Holmes
Jervis George Turner
Rd Warffe
James Nelson
Philip Cambell
Duncan Cumins
Henry Gonnerman
Firedrick Gonnerman
John Maxwell
Thos Little
Christr Long
Edward Gross
Nicholas Stoneman

Dan[l] Daly
Rich[d] Whitehorse
James Fraser
Alexander fraser
Rich[d] Whitehouse
Levi Willard
Joseph Johnson
M. Cuthell
James Leaver
Tobias Burke
Rob[t] McGinnis
Rich[d] McGinnis
John Hicks
George Hicks
Stephen Milers
William Tilby
James Perry
Edward Corry
Stephen Waddin
Peter Smith
Owen Bowen
Peter Grant
Jm[s] Chaorles
James Fairbairn
John Hughes
Ranald M[c]Donald
Watkin Richard
jenbaptiste Lafrenay
Thomas Sare
And[w] Cockburn
Tho[s] Isbusther
Joseph Landrey
Robert Withers

Jn[o] Daly
Tho[s] Oakes
John Grant
Will[m] Wintrope
Joel Andras
Thomas Fraser
Jn[o] Lumsden
William Holmes
Nicholas Montour
Patrick Small
David Rankin
(Richard Duncan
late Cap[n] Roy[l] Yorkers)
Dunc[n] Cameron
And[w] Wilson
Donald M[c]Donell
Angus M[c]Donald
Ed. Umfreville
John Lockhart Wiseman

(Parchment copy)
endorsed : In L[t] Gov[r] Hamilton's N° 2 of 9. Jan[y] 1785

SESSIONAL PAPER No. 18

## PLAN FOR A HOUSE OF ASSEMBLY.[1]

We conceive that the House of Assembly ought for the present, to consist of a Number not exceeding 70 Representatives, who ought all to profess the Christian Religion, And Speak and write the English or french languages.

That, to procure that Number, the City of Quebec (being the Capital) and Parish, and the City of Montreal and Parish, between them, elect 13. Members. The City of three Rivers 2. Members. And as there are in the province 120 parishes, that they be divided into Counties and districts according to the Number of Inhabitants, in such manner as each County or district may elect two or four Members.

When this plan was made out in fall 1784, the loyalists had not begun their new Settlements. As these new Settlements have been divided, and erected into five new districts,[2] it may be proper that each district send a certain number of Representatives, And that the two districts of Quebec and Montreal, containing the old settled part of the Country, be divided into a certain number of districts (for the purpose of electing Representatives only,) to choose Members for the house of Assembly.

That the Legislature have the power, on application to them, to erect such parishes as may in future be settled, into Counties or districts, to elect & Send Members to the Assembly, as the province increases in population.

That the qualification necessary to have a Vote at the Election of the representatives for the Cities shall be, a House, Shed or lot of Ground of the Value of forty Pounds Sterling ; And, for the Counties or districts, a real Estate, Estate of Inheritance or *Terre en roture*, of at least, one and a half Acres in front by 20 Acres in Depth, or other Estate of higher denomination, And of which the Voter shall have the absolute property; lying within the district or County, or City and parish he votes for.

That the qualification necessary for a person offering himself to serve as a representative shall be a real Estate of Inheritance or descent in Lands or Houses of the Value of thirty Pounds Sterling yearly Rent.—

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[1] Canadian Archives, Q 42, p. 127. In his letter of July 24th, 1789, to the Hon. W. W. Grenville, Adam Lymburner, who was then in London as the agent of the subscribers to the petition of Nov. 24th, 1784, states,—"The Committee of Quebec and Montreal in the autumn 1784 apprehending there might be some difficulty about those matters in this Country—drew up a short sketch of a plan for a House of Assembly of which I have the Honour of inclosing a Copy." Q 43, 2, p. 777. The plan, however, does not accompany the letter but is found in vol. Q 42, as indicated. Concerning the committees mentioned we find the following in Smith's History. "To prevent, in some measure, the pernicious effects of false reports on the objects of Reform, and for the information of the public in general, committees were named and appointed to carry forward and support the petitions, and they were printed and distributed in the French language, all over the Province. History of Canada, &c., p. 166.

[2] This marginal note was evidently added by Lymburner. The new Districts referred to were created by the Patent of July 24th, 1788, establishing and defining the Districts of Lunenburg, Mecklenburg, Nassau and Hesse. See Q 39, p. 122.

That every person shall prove by Oath, (under the pains and penalties of perjury) his qualification to either Vote or represent, being of the age of twenty one years, And be absolute proprietor of the qualification.

That none but Males shall either Vote or represent.

That the Assembly have free liberty of debate, And the power of chusing a speaker.

That all laws relating to taxation or raising monies on the Subject, originate in the House of Assembly.

That the Assembly have the sole right to try and decide in all contested Elections.

That all affairs be carryed in the Assembly by a Majority of Votes.

That at every Meeting of the Assembly, the Speaker, And, at least one half of the representatives be necessary to form a house.—

That the Governor or Lieutenant Governor for the time being, shall be obliged to call together the representatives in assembly, once every year, between the first of January and the first of May of every year, And, at any other time the Urgency of Affairs may require.—

Endorsed : Plan for a House of Assembly drawn up by the Committee's of Quebec and Montreal, in November 1784.

In Mr. Lymburner's 24th July 1789

## OBJECTIONS TO THE PETITION OF NOV. 1784.[1]

### Objections

### Aux Demandes Faites,

### À Notre Auguste Souverain;

*Par l'Adresse lue dans une Assemblée tenue chez les R. R. P. P. Recolets, le 30 Novembre 1784.*

Demandé au Prologue

Que, considerant le fardeau de la Grande-Bretagne, il nous soit accordé une Chambre d'Assemblée, pour imposer des Taxes, &c.

Répondu

Que c'est avec douleur certainement, que nous devons regarder le fardeau de notre Mere Patrie : mais hélas ! ce ne peut être qu'une douleur infructueuse : car, quel reméde y pouvons-nous apporter ? Nous, dont les besoins renaissent chaque jour ; nous, qui, chaque année nous dépouillons jusqu'au dernier sol, pour payer les effets, (déjà consommés) qu'est obligée de nous fournir cette Mere Patrie ; Nous, qui malgré les sommes énormes, que la guerre a occasionné de laisser en ce pays, sommes encore en arriere avec la Métropole, d'une balance de comptes considérable. Quelles sont donc nos ressources pour appuyer des Taxes ? Sera-

[1] Canadian Archives, Q 40, p. 199. This reply to the petition of Nov. 24th, 1784, was sent, together with other papers, in a despatch from Dorchester to Sydney, dated Jan. 10th, 1789. As the certificate appended to it indicates, it was drawn up and printed in Dec., 1784.

ce sur les Villes ? Qui ne connoît pas l'indigence de leur Citoyens. Sera-ce sur les Terres? Qui ne sçait pas, que les Campagnes endetées envers les Villes, n'ont pu jusqu'à présent se liquider; que la misere est le partage d'une trés-grande partie de leurs Habitants. Que sera-ce donc, lors qu'une partie de leurs travaux sera consacrée pour le soutien de l'Etat ?

Cet exposé, vrai tous ses points, doit convaincre, qu'une Chambre d'Assemblée, pour imposer des Taxes, est, non-seulement inutile, mais encore, prejudiciable aux intérêts de cette Colonie.

ART. I. Demandé. Que la Chambre soit indistinctement composée, d'anciens & nouveaux Sujets, &c.

Répondu. Cet article demande une plus grande extention : car, par ce mot indistinctement, il pourra y avoir autant, & même plus d'anciens que de nouveaux Sujets dans la Chambre; ce qui seroit contraire au droit naturel, puisqu'il y a vingt Canadiens contre un ancien Sujet. Que deviendront nos droits confiés à des Etrangers à nos Loix.

ART. II. Demandé. Que le Conseil soit composé de trente Membres, sans appointements, &c.

Répondu. Que cela sera bon, s'il se trouve assez de riches désintéressés pour prendre le parti du Peuple, l'honnête indigent étant dans l'incapacité de donner son temps pour rien.

ART. III. Demandé. Que les Loix Criminelles d'Angleterre soient continuées, &c.

Répondu. Que la douceur de ces Loix doivent en faire désirer la continuation ; mais demande inutile, puisque nous les avons.

ART. IV. Demandé. Que les Loix, Coutumes, & Usages de ce Pays soient continuées ; sujettes néanmoins, aux altérations que la Législation trovera nécessaire, &c.

Répondu Cet article est contradictoire ; en se qu'il constate nos Droits, & les détruits entiérement. En effet, n'est ce pas les détruires, que de les soumettre aux altérations que la Législation trouvera nécessaire d'y faire ? Ne deviendront-ils pas arbitraires? Que pourra-t-on statuer sur des Droits aussi changeants, que les Chambres auxquelles ils seront soumis ?

ART. V. Demandé. Que les Loix de Commerce d'Angleterre soient déclarées celles de cette Province, sujettes aux mêmes altérations que l'article 4me. &c.

Répondu. Que la réponse à l'article 4me est la même pour celui-ci.

ART. V Demandé. Répondu. Que l'Acte d'*Abeas Corpus* soit en force, &c.

Que notre Auguste Souverain nous l'ayant accordé,[1] il est inutile de l'importuner pour cet objet.

[1] Referring to the Ordinance of 24 Geo. III, cap. 1. See note 1, p. 741.

ART. VII. Demandé. Que dans les Cours de Jurisdiction, il soit accordé des Jurés à la demande des Parties.

Répondu. Que cet article est entiérement en faveur du Riche, contre le Pauvre. Si ce sont des Jurés ordinaires ; Pauvres que deviendront vos familles, lorsqu'il vous faudra laisser vos travaux, une partie de l'année, pour aller décider des Causes qui ne vous regardent en rien ? Vous vous plaignez déjà d'être obligés de les interrompre, lorsque vous êtes appellés pour les Affaires Criminelles, ce qui arrive six fois l'année. Que sera-ce donc, lorsque vous serez obligés d'assister à toutes les Audiences ? Quelqu'un dira peut-être que cela se fait à Londres, qu'en conséquence on le peut faire dans ce pays. Que ce quelqu'un compare le nombre de citoyens de Londres, se montant à trois cens mille hommes environ, avec douze cens tout au plus que vous êtes dans cette Ville & ses Faux-bourgs. Pour lors il verra que vous serez obligés de vous trouver 250 fois à l'Audience, contre une fois que se trouve le Citoyen de Londres. Jugez par là si vous avez d'autre métier à faire & que deviendront vos familles.

Si ce sont des Jurés spéciaux, (en conséquence payés) quel est le pauvre qui pourra lutter contre un riche oppresseur, détenteur de son bien ; qui, pour l'écraser, demandera des Jurés (qu'on ne pourra lui refuser) ne sera-ce pas mettre le pauvre dans l'alternative d'abandonner sa cause, ou se voir totalement ruiner, s'il vient à succomber. On se plaint des frais qu'entraîne la Justice. Qui pourra y suffire lorsqu'il faudra y joindre la paye de douze Jurés ? n'est-ce pas fermer la porte du Sanctuaire de la Justice à l'indigent.

ART. VIII. Demandé. Que les Cheriffs soient élus par la Chambre, aprouvés & commissionnés par le Gouverneur, &c.

Répondu. Que si le Cheriff nommé par la Chambre ne convient pas au Gouverneur, que deviendra l'administration des Loix & de la Justice ? De là ne s'ensuivra-t-il a par un temps d'anarchie, préjudiciable aux intérêts publics.

ART. IX. Demandé. Que nul Officier civil ne pourra être suspendu de sa charge, par le Gouverneur, sans le consentement du Conseil, &c.

ART. X. Demandé. Qu'aucune nouvelle Charge civile soit créée par le Gouverneur, sans le consentement du Conseil, &c.

ART. XI. Demandé. Que les Emplois de confiance soient exercés par les Personnes mêmes, &c.

Répondu. Que les trois articles précédents seroient admissibles en temps & lieu.

ART. XII. Demandé. Qu'il soit nommé des Juges dans les Cours de la Province, qu'ils ayent des appointements fixes & suffisants, &c.

Répondu. Qu'il est juste d'avoir des Juges pour administrer la Justice, qu'ils aient des appointements suffisants pour vivre convenablement

à leur état. Car, sans cela, ou ils négligeront les devoirs de leur Charge, pour s'occuper de soins qui puissent les mettre plus à leur aise, ou ils mettront la Justice a l'enchere.

ART. XIII. Demandé. Que les appels des Cours de Justice de cette Province soient faits au Lord Chancellier, à la Cour de Westminster Hall.

Répondu. Que nous avons eu jusqu'à présent recours au Roi & à son Conseil, qui prenoit nos Loix pour guides de leur décision. Mais que deviendront tous nos Droits rapportés dans une Chambre qui ne s'écarte en rien des Loix & Constitutions Britanniques? Hors, si le Conseil de la Province change vos Loix, & y substitue celles d'Angleterre, dans quelle confusion & embarras ne nous mettra-t-il pas? Si au contraire il les laisse subsister, quel moyen d'appel aurons-nous dans une Chambre qui y fait une entiere abstraction.

ART. XIV. Demandé. Qu'il Plaise à Sa Majesté, pour le bien du Commerce & faire fleurir l'Agriculture, revêtir la Chambre d'Assemblée du pouvoir d'imposer des Taxes, &c.

Répondu. Que cet article, mûrement considéré, pourroit donner matiere à bien des réflexions. Car, qu'y a-t-il de commun entre nos demandes & cette proximité, ce climat, cette situation des Etats-Unis, qui leur donne l'avantage du Commerce sur nous? Sera-ce par le moyen des Taxes qu'on prolongera notre été de trois mois, qu'on rendra notre Fleuve navigable toute l'année? non: donc, l'avantage restera toujours chez nos voisins. Sera-ce les Taxes qui feront fleurir notre Agriculture? non : puisque les Seigneurs, pour l'encourager, donnent des Terres pour trois ans sans aucune redevance, & qu'elles restent incultes faute de moyens pour les ouvrir.

Qu'est-ce donc qui peut compenser leur avantage sur nous? C'est le repos dont nos campagnes ont jouis jusqu' à présent ; exemptes de Taxes, elles ont vus, malgré l'appreté du climat, le fruit de leurs travaux, & en ont jouis. A cela on répond que les campagnes ont été molestées par le logement des Troupes & les corvées, il est vrai ; mais les Taxes qu'on leur imposera les extempteront-ils de cela. Voyons-le.

Lorsque le Roi jugera nécessaires d'envoyer des Troupes dans cette Colonie pour la sûreté de nos propriétés. Quelqu'un s'y opposera-t-il? Non c'est un droit que le Roi a dans tous ses Etats, sans même être obligé d'en rendre compte. Avons-nous des Cazernes en état de loger ces Troupes? non : peuvent-elles être toute l'année sous des tentes? non ; donc, nous ferons des Cazernes où nous les logerons.

Les Troupes menent avec elles un train considérable de munitions, vivres, &c. Qui transportera ces effets à leurs destinations? des gens de bonne volonté, dit-on, qu'on payera

bien. Vous aurez des gens de bonne volonté, il est vrai, mais à des prix si exhorbitants, que la Province ne pourra pas suffire à cette seule branche de dépense. Les taxera-t-on ? il n'y en aura plus. Donc, pour ne pas arrêter des travaux aussi indispensables, on sera obligé de commander; en conséquence nous ferons des Corvées.

Quelqu'un dira, peut-être, comme il a déjà été dit, qu'on prendra, ce qu'on appelle Volontaires dans les campagnes. Voilà donc une classe d'hommes *Libres* condamnés à l'*Esclavage*. N'est-ce pas assez que la fortune leur soit ingrate, sans encore aggraver leur malheur par la servitude. Cela étant inadmissible, tout bien consideré, mûrement examiné ; il faut conclurre que les Taxes ne pourront pas nous exempter, ni du logement des Troupes, ni des corvées : qu'en conséquence la Chambre, pour les imposer, est contraire aux intérêts de cette Colonie indigente.

FIN.

Je certifie que dans le courant du mois de Décembre de l'année 1784 j'ai imprimé aux environ de Deux cens exemplaires des Objections ci-dessus & environ le même nombre d'une Adresse à Sa Majesté, en Opposition à la Chambre d'Assemblée (dans le même espace de temps) Montréal 29 Xbre 1788.

fl. Mesplet
imprimeur

(*Translation*)

OBJECTIONS
TO THE REQUESTS MADE

TO OUR AUGUST SOVEREIGN ;

In the Address read at an Assembly held at the house of the R.R.P.P. Recolets, the 30th of November 1784.

Requested in the Prologue.

*That*, considering the burden of Great Britain, a House of Assembly should be granted us, to impose Taxes, &c.

Replied.

That we ought certainly to view with sorrow the burden of our Mother Country ; but alas! it can only be a fruitless sorrow, for what remedy can we offer? We, whose wants increase day by day ; we, who, every year despoil ourselves of our last farthing to pay for the supplies, which this Mother Country is compelled to furnish us, and which are already exhausted ; we, who in spite of the enormous sums, which in consequence of the war have been left in this country, are still in arrears with the parent state, for the balance of a considerable sum. What then are the resources on which taxes could be levied ? Is it on the Towns ? Who does not know the poverty

of their Citizens. Is it on the Lands? Who does not know that the rural districts are in debt to the Towns, and have at present nothing with which to liquidate ; that misery is the lot of a very large portion of their Inhabitants? What will be the result then, if a portion of their labours must be applied to the support of the State?

This representation, which is true in every point, ought to be convincing evidence that a House of Assembly for the imposition of Taxes is not only useless, but would be prejudicial to the interests of this Colony.

ART. I. Requested. That the Chamber be indifferently composed of the ancient and new Subjects, &c.

Replied. This article requires more explanation : for, from this word *indifferently*, there might be as many and even more ancient than new Subjects in the House, which would be contrary to natural right, as there are twenty Canadians to one ancient Subject. What would become of our rights if they were entrusted to Strangers to our Laws?

ART. II. Requested. That the Council be composed of thirty members without salaries, &c.

Replied. This might be satisfactory if there were enough disinterested rich men to take the part of the people, the honest poor man being unable to give his time for nothing.

ART. III. Requested. That the Criminal Laws of England be continued here.

Replied. That the leniency of these laws would make their continuation desirable; but the demand is unnecessary, since they are in force.

ART. IV. Requested. That the Laws, Usages and Customs of this Country be continued ; subject nevertheless, to those changes that the Legislation may find necessary, &c.

Replied. This article is contradictory ; in that it affirms our Rights, and completely destroys them. For as a matter of fact, is it not destroying them to subject them to any alterations which the Legislation may find it necessary to make? Would they not become arbitrary? What statutes could be based on Rights as changeable as the House to which they will be submitted?

ART. V. Requested. That the Commercial Laws of England be declared those of this Province, subject to the same alterations as in Article IV. &c.

Replied. That the reply to article IV will serve for this article.

ART. VI. Requested. That the Act of *Habeas Corpus* shall be in force, &c.

Replied. That our August Sovereign having granted it to us, it is unnecessary to trouble him further concerning it.

ART. VII. Requested. That in the Courts of Jurisdiction, Juries may be granted

Replied. at the request of the Parties concerned.

That this article is entirely in favour of the Rich against the Poor. If they are the ordinary Juries ; Ye poor men, what will become of your families when you are forced to leave your work, for a part of the year, to go and decide causes which in no way concern you ? You already complain at being compelled to interrupt your work when you are summoned for Criminal Affairs, which occurs six times in the year. What would be the result if you were obliged to take part in every sitting ? Some one perhaps will say that this is done in London, and it can therefore be done in this country. But let such a one compare the number of citizens in London, amounting to about three hundred thousand men, with twelve hundred which, at the most, is all that you are in this town and its suburbs. He will then see that you would be obliged to be present at the sittings, two hundred and fifty times for every time that a citizen of London need appear. Judge from this if you have any other trade to carry on, what would become of your families.

If the Juries are special ones (and in consequence remunerated) what poor man is there who could contend against a rich oppressor who has unjustly seized his property ; and who, to crush him, may demand a Jury (which could not be refused him) would not this force the poor man to the alternative of giving up his cause, or of being totally ruined if he loses. Complaints are now being made of the expense which Justice entails. Who will be able to afford it, when the payment of twelve Jurors is to be added ? Would not this close the door of the Sanctuary of Justice to the poor ?

ART. VIII. Requested. That the Sheriffs shall be elected by the House, approved and commissioned by the Governor, &c.

Replied. That if the Sheriff nominated by the House does not please the Governor, what will become of the administration of the Laws of Justice ? Will not a time of anarchy in consequence ensue, prejudicial to the public interests.

ART. IX. Requested. That no civil Officer shall be suspended from his office by the Governor without the consent of the Council, &c.

ART. X. Requested. That no new civil Office shall be created by the Governor without the consent of the Council, &c.

ART. XI. Requested. That all positions of trust shall be filled by the persons themselves, &c.

Requested. That the three preceding articles would be admissible time and place considered.

ART. XII. Replied. That Judges shall be appointed for the Courts of the Province, and that they shall have fixed and sufficient stipends.

Replied. That it is right to have Judges to administer Justice, and that they ought to have stipends sufficient to live suitably to

their station. For, without that, they will either neglect the duties of their office, to occupy themselves with the care of their own interests, or they will put Justice up to auction.

ART. XIII. Requested. That appeals from the Courts of Justice of this Province be made to the Lord Chancellor, at the Court of Westminster Hall.

Replied. That up to the present time we have made appeals to the King and his Council, who have taken our Laws as the guide of their decisions. But what will become of our Rights when brought before a Court which will deviate in nothing from the British Laws & Constitution? And further if the Council of the Province changes your laws, and replaces them by the laws of England, in what confusion and difficulty shall we not be placed? If, on the contrary, they are allowed to remain in force what means of Appeal shall we have in a Court which entirely ignores them.

ART. XIV. Requested. That it may Please His Majesty in the interests of Commerce, and for the encouragement of Agriculture to invest the House of Assembly with power to impose Taxes, &c.

Replied. That this article duly considered would give rise to many reflections. For what community is there between our requirements & the proximity, the climate, and the situation of the United States which give them the advantage in Trade over us? Would the imposition of Taxes add three months to our summer, and make our river navigable for the whole year? No: then the advantage would still be on our neighbours' side. Would Taxes make our Agriculture flourish? No: for the Seigniors to encourage Agriculture give the lands for three years, exempt from all dues, and the lands often lie uncultivated for lack of means to work them.

What is it then that compensates for the advantages they possess over us? It is the peace that our rural districts have hitherto enjoyed ; free from Taxation, and in spite of the severity of the climate, they have seen the fruit of their labours, and have enjoyed it. To this it may be urged that the rural districts are harassed by the billeting of Troops and by corvées. This is true, but would the imposition of Taxes exempt them from this burden. Let us see.

When the King considers it necessary to send Troops into this Colony for the safety of our possessions, would any one oppose it? No, this is a right which the King possesses in all his Dominions, without even being obliged to give account of his action. Have we Barracks in a condition for housing these Troops? No; can they live the whole year under canvas? no ; then we must either construct Barracks, or lodge them.

Troops bring with them a considerable amount of ammunition, provisions, &c. Who is to transport these goods to their destination? willing men, it will be said, who will be well paid. You can get willing men, it is true, but at a rate so exorbitant that the Province would not have enough to pay for this one branch of defence. If you impose taxes upon them, you will no longer find them. So then, not to put a stop to work so indispensable, it will be necessary to commandeer ; and in consequence we must have recourse to Corvées.

But someone will perhaps say as has already been said, that what are called Volunteers will be raised in the country. Here then would be a band of *Freemen* condemned to *Slavery*. Is it not enough for fortune to have treated them so unkindly, without increasing their misery by slavery. This being inadmissible, taking everything into consideration it appears conclusive after mature deliberation that Taxation cannot exempt us from the billeting of Troops, or from corvées ; and that consequently an Assembly for the imposing of Taxes would be contrary to the interests of this impoverished Colony.

End.

I certify that during the Course of the month of December of the year 1784, I have printed about two hundred copies of the Objections and about the same number of an Address to His Majesty in opposition to the House of Assembly, (in the same space of time) Montreal 29th December 1788.

fl. Mesplet
printer.

## ADDRESS OF ROMAN CATHOLIC CITIZENS TO THE KING.[1]

(Copie)

## LA TRÈS HUMBLE ADDRESSE DES CITOYENS ET HABITANS CATHOLIQUES ROMAINS DE DIFFERENTS ETATS DANS LE PROVINCE DE QUEBEC, EN CANADA

Sire, Au Roi.

Les Bontés dont Votre Cœur Royal et Généreux a pris plaisir à combler Vos fideles et loyaux Sujets Canadiens, les Démarches actuelles et pre-

[1] Canadian Archives, Q 62A—1, p. 297. No names are appended to this petition and it is without date, but it evidently belongs to this period, and is doubtless the one referred to in the printer's note at the end of the preceding document, as being issued along with it. An interesting appeal to the French Canadians generally to protest against the petition of the English together with some of the French citizens, for the repeal of the Quebec Act, was printed and circulated, without signatures or date, under the heading of "Freres et Compatriotes." A copy of this was enclosed in a letter of 10th June, 1785, from Finlay to Nepean, Under Secretary of State. The origin of it is sufficiently indicated by the upbraiding administered to the people for not following the counsel of the clergy and the seigneurs, which would have prevented the quartering of English troops upon them. In any case, if there is to be a representative government, it must be on the basis of three equal Estates, "le Clergé, la Noblesse et la Bourgeoise." In England it is true they have representative government, but that only leads to the levy of taxes. They are told by the agitators that in Canada an assembly will protect them from the corvées; but in England, with their Parliament they have also the press gang, which tears away the youths from their families for four, five, and six years. See C.O. 42, vol. 17, p. 184.

maturées de Vos Anciens Sujets residents dans notre Province, et le petit Nombre de Nouveaux qui se sont joint à eux, nous font espérer que Votre Très Gracieux Majesté nous permettra de nous prosterner derechef au Pied de son Trône, pour implorer Sa Bienfaisance et Sa Justice.

Dans les Addresses que nous avons pris la Liberté de faire passer à Votre Majesté Deux Objets ont eu l'Unanimité de nos Con-citoyens ; la Religion de nos Pères etoit pour Vos Nouveaux Sujets, comme pour tous les Peuples du Monde, le Point essentiel de nos Demandes. Animés de cette Confiance, que la Générosité de notre Souverain nous inspiroit, nous espérions et nous espérons encore, que Votre Majesté nous accordera les Moyens nécessaires pour la perpétuer dans notre Colonie: Nous avons, Très Gracieux Souverain, un Besoin urgent de Prêtres pour remplir les Seminaires et Missions de notre Province; des Régents et des Professeurs de cette Classe, et de toute autre, nous manquent: Nos Collèges sont deserts; de ce Defaut provient l'Ignorance, et de-là la Depravation des Mœurs. C'est un Peuple soumis, un Peuple fidele, qui attend de Votre Clémence Royale La Liberté de tirer de l'Europe des Personnes de cet Etât.

Le second Objet, Très Gracieux Souverain, étoit, que sous quelque Forme de Gouvernement qu'il plairoit à Votre Majesté établir en cette Province, Vos Sujets Canadiens Catholique jouissent indistinctement de tous les Priviléges, Immunités, et Prerogatives dont les Sujets Britanniques jouissent dans toutes les Parties du Globe soumises à Votre Empire. De ce second Objet S'ensuivoit notre Désir le plus ardent de voir dans le Conseil Legislatif de notre Province un plus grand Nombre de vos nouveaux Sujets Catholiques, proportionnement à celui qu'ils composent ; de Personnes expertes dans nous Coûtumes, qui devant naturellement mieux connoître nos Loix municipales, nous en feroient plus efficacement ressentir les Avantages suivant les Intentions Royales de votre Majesté, qui nous les à Octroyé.

Une Colonie naissante, un Peuple très-imparfaitement instruit des Loix et constitutions Britanniques, ne croit pas devoir inconsiderément demander des Loix et Coûtumes à lui inconnues ; il doit, au contraire, et telle e[s]t l'Opinion de Vos Suppliants, S'en rapporter entierement à la Bienveillance de Son Auguste Souverain, qui fait mieux le Gouvernement qui convient à ses Sujets, et les Moyens les plus propres à les rendre heureux.

Qu'il nous soit permis seulement d'assurer Votre Majesté que nous ne participons en aucune Manière aux Demandes de Vos Anciens Sujets, conjointement avec quelque Nouveaux,[1] dont le Nombre, en Egard à celui qui compose notre Province, ne peut avoir beaucoup d'Influence.

Que la Majeure Partie des principaux Propriétaires de notre Colonie n'a point été consultée.

Qu'il Vous plaise, Très Gracieux Souverain, considerer que la Chambre d'Assemblée n'est point le Voeu unanime, ni le Desir général de Votre Peuple Canadien, qui par sa Pauvreté, et les Calamités d'une Guerre recente, dont cette Colonie a été le Theâtre, est hors d'Etât de supporter les

[1] Referring to the petition of Nov. 24th, 1784. See p. 742.

Taxes qui en doivent nécessairement resulter ; et qu'à bien des égards leur Petition paroit contraire et inconsistante avec le Bonheur de Nouveaux Sujets Catholiques de Vôtre Majesté.

C'est pourquoi, Très Gracieux Souverain, nous Vous supplions, qu'en Consideration de la Fidelité et Loyauté de Vos Sujets Canadiens, dont leur ancien Gouverneur, Sir Guy Carleton, a eclairé la Conduite dans les Circonstances les plus critiques, il soit permis à nos Evêques Diocesains de tirer d'Europe les Secours Spirituels ; qui nous sont si indispensablement nécessaires, que le libre Exercise de notre Religion sont continué dans toute son Etendue, sans aucune Restriction, que nos Loix Municipales et Civiles nous soient conservées dans leurs Entier ; et ces deux Points, avec les mêmes Prérogatives[1] dont nos Pères et nous jouissions avant la conqûete de ce Pays par les Armes Victorieuses de Votre Majesté ; que Vos nouveaux sujets Catholiques, qui forment les Dixneuf-Vingtieme de cette Province ayent à l'avenir, en Proportion de cette Nombre, une plus grande Part à la Distribution de Vos Faveurs Royales. Et que dans le Cas que Votre Auguste Volonté fût d'acquiescer aux Demandes de Vos Anciens Sujets conjointment avec quelques nouveaux, il vous plaise surseoir Votre Decision Royale jusqu' a ce que tous les Corps et Etâts qui composent notre Colonie ayent été généralement et légalement convoqués, ce que la Saison trop avancée nous empêche de faire en ce Moment ; afin que par ce Moyen le Voeu unanime de notre Nation puisse être transmis à Vôtre Majesté.

C'est que Vos fideles et loyaux Sujets Canadiens, fondés sur Droit Naturel, et plus encore sur Vos Bontés Paternelles, espérent humblement obtenir de leur Très Gracieux Souverain : Ils ne cesseront de prier pour la Conservation de Sa Personne Sacrée, pour son Auguste Famille, et la Prosperité de ses Royaumes. Tels sont les sentiments qui les font souscrire avec le plus profond Respect.

Sire
De Votre Majesté
Les tres-humble,
trés-obeissants Fideles
et loyaux Sujets.

[1] This and other expressions in the document would indicate that this petition was presented by the noblesse and the higher clergy.

SESSIONAL PAPER No. 18

(*Translation.*)

(Copy)

## THE VERY HUMBLE ADDRESS OF THE ROMAN CATHOLIC CITIZENS AND INHABITANTS OF DIFFERENT CONDITIONS IN THE PROVINCE OF QUEBEC IN CANADA

To the King.

Sire,

The Favours which it has pleased Your Royal and Generous Heart to heap upon Your faithful and loyal Canadian Subjects, the present illconsidered Measures of Your Ancient Subjects resident in our Province, and the small Number of New Subjects who have joined them, make us hope that Your Most Gracious Majesty will allow us to kneel down at the Foot of your Throne to implore Your Benevolence and Your Justice.

In the Addresses which we have taken the Liberty of transmitting to Your Majesty, Two points have the unanimous Consent of our Fellow-citizens. The Religion of our Forefathers was for Your new Subjects, as to every People in the World, the essential Point of our Petitions. Animated by that Confidence with which the Generosity of our Sovereign inspired us, we hoped, and still hope that Your Majesty will grant us the necessary Means for perpetuating it in our Colony. We are, Most Gracious Sovereign, in most urgent need of Priests to carry on the work of the Seminaries and Missions of our Province ; Directors and Professors of this Class, and indeed of any other are lacking. Our Colleges are deserted; from this want arises Ignorance, and from Ignorance Moral Depravity. Submissive and loyal, this People hope to receive from Your Royal Clemency, Permission to bring from Europe, Persons of this Class.

The second Object, Most Gracious Sovereign, was that under whatever Form of Government might seem best to Your Majesty to establish in this Province, Your Catholic Canadian Subjects, without distinction, might enjoy all the Privileges, Immunities, and Prerogatives, enjoyed by British Subjects in all those Parts of the Globe, which are under Your Sway.

From this second Object follows our most earnest Desire to see in the Legislative Council of our Province a larger Number of Your New Catholic Subjects in proportion to their numbers; Persons experienced in our Customs, who being naturally better acquainted with our Municipal Laws, would more effectually impress on us the Advantages resulting from the Royal Instructions of Your Majesty, who has granted them to us.

An Infant Colony, a People very imperfectly acquainted with the British Laws and Constitution does not feel that it ought, without due consideration, to ask for Laws and Customs as yet unknown to it ; it ought, on the contrary, and such is the opinion of Your Petitioners, to cast itself entirely on the Goodness of its August Sovereign, who can best form the Government

which is most suited to his Subjects, and employ the Measures most fitted to render them happy.

May we be allowed to assure Your Majesty, that we in no wise concur in the Petitions of Your Ancient Subjects, conjointly with some New Ones, whose Number compared with the total number comprised in our Province, can exercise but little Influence.

That the Greater Number of the principal Proprietors of our Colony have not been consulted.

May it please You, Most Gracious Sovereign, to consider, that the House of Assembly is not the unanimous Wish, nor the general Desire of Your Canadian People, who through Poverty and the Misfortunes of a recent War, of which this Colony has been the Theatre, are not in a Condition to bear the Taxes which must necessarily ensue, and that in many respects to Petiton for it appears contrary to, and inconsistent with the wellbeing of the New Catholic Subjects of Your Majesty.

For this reason, Most Gracious Sovereign, we entreat You that in Consideration of the Fidelity and Loyalty of Your Canadian Subjects, to whose Behaviour in the most critical Circumstances, their former Governour Sir Guy Carleton has testified, our Diocesan Bishops may be allowed to bring over from Europe the Spiritual Help, which is so indispensably necessary for us, that the free Exercise of our Religion may be continued to us to the fullest Extent, without any Restriction, that our Municipal and Civil Laws may be preserved in their Entirety, and that with these two Points may be granted the same Privileges enjoyed by our Forefathers and ourselves, before the Conquest of this Country by the victorious Arms of Your Majesty ; that Your new Catholic Subjects, who form nineteen twentieths of this Province, may in the future, proportionately to their Number, have a larger Share in the Distribution of Your Royal Favours. And that, in Case it should be Your Royal Will to agree to the Petitions of Your Ancient Subjects, and of some New Ones, it may please you to suspend Your Royal Judgment till all the Classes and Communities which compose our Colony shall have been universally and legally called together, which the Lateness of the Season, at present prevents us from doing ; so that by these Means the unanimous Wish of our People may be transmitted to Your Majesty.

This is what Your faithful and loyal Canadian Subjects, relying upon Natural Right, and still more, upon Your Paternal Affection, humbly hope to obtain from their Most Gracious Sovereign. They will never cease to pray for the Preservation of Your Sacred Person, for your August Family, and for the Prosperity of your Realm. Such are the feelings which lead us to subscribe ourselves, with the deepest Respect.

Sire

Your Majesty's

Most humble,

most obedient Faithful

and loyal Subjects.

SESSIONAL PAPER No. 18

# A DRAUGHT OF A PROPOSED ACT OF PARLIAMENT FOR THE BETTER SECURING THE LIBERTIES OF HIS MAJESTY'S SUBJECTS IN THE PROVINCE OF QUEBECK IN NORTH AMERICA ;[1]

OR

## An Act to explain and amend an Act Passed in the fourteenth Year of the Reign of His present Majesty, intitled, "An Act for making more effectual Pro- "vision for the Government of the province of "Quebeck in North America."

N.B. Mr. Powis moved for leave to bring in a bill to this effect in April, 1786.[2]

The Laws of England relating to the writ of *Habeas Corpus ad Subjiciendum*, and the Protection of personal Liberty, shall take place in the Province of Quebeck, after the 1st day of September, 1785.

For the better securing the Liberties of His Majesty's Subjects in the Province of Quebeck in North America, It is hereby Enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and the Commons in this present Parliament assembled, That all the Laws of England relating to the Protection of personal Liberty by and by Virtue of the Writ of *Habeas Corpus ad Subjiciendum*, or otherwise, that were in force in England on the seventh Day of October in the Year of our Lord Christ one thousand, seven hundred, and sixty three, (being the Day of the Date of His Majesty's Royal Proclamation under the Great

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[1] Canadian Archives, Q 56-3, p. 618. This bill was introduced into the British House of Commons on April 28th, 1786, and was evidently drawn up about the same time as the petition of Nov. 24th, 1784. It will be observed from the tenor of it that those who framed it had in view the actions of Governor Carleton in dismissing Chief Justice Livius, and of Governor Haldimand in his "short methods with dissenters," as also the opposition of these governors to the introduction of the writ of Habeas Corpus and of trial by jury in civil matters.

[2] Mr. Powis, or Powys as the name is given in the parliamentary records, was a prominent member of the Opposition, usually co-operating with Fox, Burke, Sheridan, Savile, Courtney and others of that group. He took a special interest in Canadian affairs and, in succession to Sir Geo. Savile, mover of the famous resolution regarding the increasing power of the Crown, was active in pressing upon the attention of the Ministry and the House of Commons, the claims of those of both races in Canada who desired a less autocratic form of Government. The following note will indicate some of his activities in connection with the foregoing petitions: House of Commons; March 30th, 1786. "Mr. Powys having reminded the House, that he had last session of Parliament presented a petition from the principal inhabitants of Quebec, complaining of certain grievances in their legislative authority; it was then thought advisable to postpone the consideration of the subject, as government would undoubtedly remedy the complaint. He was sorry, however, to observe, that during that interval, there had been no appearance of Administration redressing the grievance of the petitioners; he therefore thought it a duty incumbent upon him to give notice, that he would, on the first open day, submit to Parliament a proposition for redress." The *London Chronicle*, Vol. 59, p. 308.

In supporting his motion for leave to bring in this bill, he said it was chiefly intended to enforce the Instructions given to the Governors after the Quebec Act, and also to secure "an emancipation of the Legislative Council from the uncontroulable authority of the Governor, by whom they were liable to be displaced without cause assigned." Mr. Pitt, while considering that some reconstruction of the Government of Quebec might be extremely necessary, yet felt that in view of the very contradictory petitions which the Ministry had received from the Province, it was premature to go into the question until Sir Guy Carleton, who had just been appointed to the Government of the whole of British North America, had reported on the condition of the country. Mr. Fox "professed himself at all times to have been an enemy to the Quebec bill, and a friend to every alteration of it which was proposed." He therefore supported the measure. Mr. Sheridan and others also supported the bill, referring to the extraordinary powers conferred upon Carleton by his new Commission and considering him as scarcely the most likely person to report in favour of diminishing his own authority. After an interesting debate the motion was defeated by 61 to 28. *London Chronicle*, Vol. 59, p. 407.

Seal of Great Britain for erecting four new civil Governments in the Countries and Islands then newly ceded to the Crown of Great Britain, to wit, the Governments of Quebeck, East Florida, West Florida, and Grenada) shall be in force in the said Province of Quebeck from and after the first Day of next September in this present Year of our Lord one thousand, seven hundred, and eighty-five, as being one of the principal Benefits of the Laws of England that were promised in His Majesty's Proclamation above-mentioned to His Majesty's Subjects residing in the said Province. And further the said Writ of *Habeas Corpus* shall be granted in the Manner prescribed by the Statute made in that Behalf in the thirty-first Year of the late King Charles the Second, not only in all Criminal, or supposed Criminal, Cases, but in all other Cases, whatsoever in which the said Writ of *Habeas Corpus* might have been granted in Term-Time by the Court of King's Bench in England, on the said seventh Day of October in the Year of our Lord one thousand, seven hundred, and sixty-three.

But they may be Suspended for three months at a time by an Ordinance of the Legislative Council of the Province in times of actual rebellion in the Province or of an invasion of it by a foreign Country.

PROVIDED nevertheless, that, when the Peace of the said Province shall be actually broken, either by a Rebellion or any of His Majesty's Subjects in the said Province against His Majesty's Authority, or by an Invasion of the said Province by a foreign Enemy, but in no other Case whatsoever, it shall and may be lawful for the Governor in Chief, or the Commander in Chief, of the said Province, or, in Case of his Death or absence from the said Province, for the Lieutenant-Governour, or Commander in Chief, of the said Province, by and with the Advice and Consent of the Legislative Council of the said Province, in a Meeting of the said Council in which not fewer than seventeen Members of the same shall be present, to pass an Ordinance for suspending the Right of His Majesty's Subjects in the said Province to the Relief afforded by the said Writ of *Habeas Corpus* for the space of three Months, and no longer ; by Virtue of which Suspension all Persons that shall have been committed to Prison by the Warrant, or order in writing, of any lawful Magistrate, in the Province having competent Jurisdiction to make such Commitments, upon either a positive Charge, or a Suspicion, of High Treason, expressed in the said Warrant, or Order, may be detained in Custody without Bail or Mainprize to the End of the said three Months, during which the said Ordinance for suspending the Writ of *Habeas Corpus* shall be in Force. And it shall also be Lawful for the Governour in Chief or Lieutenant-Governour, or Commander in Chief, of the said Province, with the legislative Council of the same, in a Meeting of the said Council, in which not fewer than seventeen

Members shall be present, in case the Disturbance of the Peace in the said Province shall continue during the Space of two Months, or more, out of the said three months of suspension of the *Habeas Corpus* appointed by such first Ordinance, to pass a second Ordinance at the end of the said two Months, or more, to prolong the suspension of the said Writ of *Habeas Corpus* for a further Time, so that it shall continue for the Space of three Months from the Time of passing such second Ordinance ; and so on from Time to Time, at the Distance of two Months or more from the Time of passing any such Ordinance, it shall be Lawful to pass another Ordinance to prolong it's Operation for a further Space of Time, so that it shall continue for the Space of three Month's from the Time of passing every such preceeding Ordinance, so long as the Continuance of the Disturbance of the Peace of the Province shall make such Ordinances necessary.

The Governor of the said Province shall in no Case imprison any-person by his own Warrant, or order.

And it is further Enacted by the Authority aforesaid, That from and after the said first Day of September next in the present Year of our Lord one thousand, seven hundred and eighty-five, it shall not be Lawful in any case for the Governour in Chief of the said Province, or, in Case of his Death or Absence from the said Province, for the Lieutenant-Governour, or the Commander in Chief, of the said Province, (who in such cases become invested with the Powers and Privileges of the Governour in Chief, and cannot be prosecuted criminally in the Courts of Justice in the Province,) to commit any Person whatsoever to Prison for any Offence, or Cause, whatsoever by his own Warrant, or Order: but all such Imprisonments shall be made, when necessary, by the Warrants, or Orders, of the Chief Justice of the said Province, or of the Judges of the King's Courts in the said Province, or by the Justices of the Peace, or Commissioners of the Peace, in the said Province, or other Magistrates having competent Jurisdiction in the said Province, by their Warrants, or Orders in Writing, in which the Offences, or Causes, for which such Imprisonments shall be made, shall be expressed.

And the said Warrants, or Orders in Writing, shall remain in the Hands of the Keepers of the Prisons to which such Offenders shall be committed, to the End that they may be produced by them as the Grounds of their Justification for having detained such Persons in Prison, either when they shall be required by the Chief Justice, or other Judges of the Province, by Means of a Writ of *Habeas Corpus ad Subjiciendum*, to bring up the Bodies of the Prisoners detained in their Custody, together with the Causes of their being so detained, before the said Chief Justice, or other Judges, or when they shall be sued in any of the Courts

of Justice in an Action of Trespass and false Imprisonment for having so detained any of the said Prisoners.

Proviso with respect to the power of arresting Military Officers, or Soldiers, which he may have, if he shall be an Officer of the Army, by virtue of any Act of Parliament for the punishment of mutiny and desertion.

PROVIDED nevertheless, that nothing herein before enacted shall prevent the Governour in Chief, or Lieutenant-Governour, or Commander in Chief, of the said Province, being a Military Officer in His Majesty's regular Troops, from arresting and keeping under Arrest any Officer, or Soldier, in the said Troops, that is under his Command, by Virtue of any Authority he may be invested with for that purpose by any Act of Parliament for the Punishment of Mutiny and Desertion in the Army that may be then in Force ; but he shall have the same Right to exercise such Military Authority as he would have had if he had not been the Governour in Chief, or Lieutenant-Governour, or Commander in Chief, of the said Province.

The Members of the Legislative Council shall not be liable to be removed, or suspended by the Governour of the Province but only by the King.

AND IT IS FURTHER ENACTED by the Authority aforesaid, That from and after the said first Day of September next in the present Year of our Lord one thousand seven hundred, and eighty-five, no Member of the said Legislative Council shall be liable to be either removed from his place and Office of a Member of the said Council, or Suspended from his Exercise of the same for any Time, how short soever, by the Governour in Chief of the said Province, nor in any other Manner than by His Majesty's Order in his Privy Council of Great Britain, or under his Signet and Sign-Manual counter-signed by one of His Majjesty's principal Secretaries of State.

The Judges of the Province shall not be liable to be removed or suspended by the Governnour, but only by the King.

AND IT IS HEREBY FURTHER ENACTED by the Authority aforesaid, That, from and after the said first Day of September in this present Year of our Lord one thousand, seven hundred, and eighty-five, neither the Chief Justice of the said Province nor any of the Judges of the Courts of Criminal or Civil Jurisdiction in the same, shall be liable to be removed from his Office of Chief Justice, or Judge, by the Governour in Chief of the said Province, nor in any other Manner than by His Majesty's Order, in His Privy Council of Great Britain, or under His Signet and Sign-Manual countersigned by one of His Majesty's principal Secretaries of State.

Unless the Legislative Council shall address the Governour to suspend a Judge for some misconduct or neglect of duty; in which Case he may be Suspended for one Year.

PROVIDED nevertheless that, if an Address shall be presented to the Governour in Chief of the said Province, or, in Case of his Death or Absence from the said Province, to the Lieutenant-Governour or Commander in Chief of the same, by a Majority of the whole Number of the Members of the said Legislative Council, setting forth some Misconduct or Neglect of Duty in the Chief Justice of the Province, or in any other Judge of the same, and thereupon praying that he may be suspended from his Office of Chief Justice, or Judge, in the said Province for the

Space of a Year, it shall be lawful for the Governour in Chief of the said Province, or, in Case of his Death or Absence from the said Province, for the Lieutenant-Governour or Commander in Chief, of the said Province for the Time being, to suspend the Chief Justice, or Judge, against whom such Address of the Legislative Council shall have been presented, from the exercise of his said Office of Chief Justice, or Judge, in the said Province for the said Space of one year : After which Time the said suspended Person shall either resume the Exercise of his said Office of Chief Justice, or Judge, in the said Province or be Suspended from the Exercise of it for a further Time, or be intirely removed from it, as the King's Majesty shall think fit to direct in the Course of the said Year of his Suspension either by His Order in His Privy Council of Great Britain, or by an Order under his Signet and Sign-Manual countersigned by one of His principal Secretaries of State. And if no such Signification of the King's Majesty's Pleasure on the said Suspension shall be made in the course of the Year, during which it shall continue, the said Suspension shall be at an End at the Expiration of the said Year, and the said Chief Justice, or Judge, that shall have been so Suspended, shall resume the Exercise of his said Office.

And no Suspension of the Chief Justice of the said Province, or of any other Judge in the same, from the Exercise of his said Office of Chief Justice, or Judge, made by the Governour in Chief of the said Province, or any other Person therein, in any other Manner than is herein before set forth, shall be of anv Validity, or Force, whatsoever.

Persons admitted to act as Advocates in the Courts of Justice in the Province of Quebeck Shall not be Suspended from the exercise of their said profession by any authority but that of the Judges of the Courts in which they practice, and by them only by a written Order, memtioning the Cause of Such Suspension.

AND IT IS FURTHER ENACTED by the Authority aforesaid, That, from and after the said first Day of September in the present Year of our Lord one thousand, seven hundred, and Eighty-five, no Barrister at Law, or other Person who has been admitted, according to the Rules and Customs established in the said Province of Quebeck, to act as an Advocate at the Bar of any Court of Justice in the said Province, shall be prohibited, or suspended, from the Exercise of the said Profession of an Advocate in the said Court, for any Time how short soever, in any other Manner, or by any other Authority than that of an Order of the Judge, or Judges, of the Court in which he has acted as an Advocate, grounded either on some Misconduct in his Capacity of an Advocate in the said Court, or on a legal Conviction of some Felony, or other Offence ; which Order of the Judge, or Judges, of the Court, either for excluding him perpetually from the Liberty of acting as an Advocate in the said Court, or for suspending him therefrom for a limited Time, shall be in writing and shall set forth the particular Fault in the

said Advocate's Conduct in the said Court, or the Offence whereof he shall have been legally convicted, as aforesaid, on which the said Order shall be grounded. And an Appeal shall lie from the said Order of Prohibition, or Suspension made by the Judge, or Judges, of the Court in which the said Advocate shall have practised, to the Legislative Council of the said Province, who, after due Consideration of the Matter, shall either rescind the said Order, or confirm it, or mitigate the Severity of it by reducing it from a total and perpetual Prohibition to a temporary Suspension from the Exercise of his said Profession of an Advocate, or from a suspension for the Time mentioned in the Order to a Suspension for a shorter Time, as they shall see Occasion. And from the Decree that shall be made herein by the said Legislative Council there shall lie a further Appeal to the King's Majesty in his Privy Council of Great Britain ; where the Matter shall be finally determined. But every such Order of Suspension of an Advocate from the Exercise of his Profession shall be in Force and take Effect, notwithstanding an Appeal shall have been made from it, until such Appeal shall have been heared and determined and a Decree shall have been made by the Court appealed to, whereby such order of Suspension shall have been rescinded, or altered.

An Appeal shall lie from Such Order of the Judges to the Legislative Council, and from the decree of the Legislative Council to the King, in his Privy Council of Great Britain.

AND, whereas there are good Grounds for believing that the Introduction of the Trial by Jury into the said Province of Quebeck in Civil Actions, whenever either of the Litigant Parties shall desire it, in the same Manner in which it actually took Place in the said Province from the Month of September in the Year of our Lord one thousand, seven hundred, and sixty-four, till the first Day of May in the Year of our Lord one thousand, seven hundred, and seventy-five, would greatly contribute to the fair and impartial Administration of Justice in the said Province,

IT IS THEREFORE FURTHER ENACTED by the Authority aforesaid, That, from and after the said first Day of September in the present Year one thousand, seven hundred, and Eighty-five, the said Method of Trial by a Jury of twelve good and lawful Men shall again take Place in the said Province in all Civil Actions in the Courts of Justice in the same, whensoever both, or either, of the Parties shall desire it ; but not otherwise. And, to the End that the Persons who shall be chosen to serve on Juries may attend their said Duty with the more Chearfulness, they shall receive, as a Reward for their Attendance and Trouble, the Sum of Half a Spanish Dollar to each Jury-Man ; which Sum shall be paid to them immediately in Court as soon as they shall have brought in their Verdict, by the Party which shall have desired to have such mode of Trial, or, if both Parties shall have

After the 1st Day of next September 1785, the Trial by Jury shall take place in the Said Province in the determination of Civil Actions in the same, whenever either of the parties shall desire to have it.

joined in desiring such Mode of Trial, by both the Litigant Parties equally.

AND, to the End that the Resolutions and Proceedings of the Legislative Council of the Province (by which the said Province is now governed without an Assembly elected by the Freeholders of the same) may be made more agreeable to the general Sense and Inclinations of the People of the same, IT IS FURTHER ENACTED by the Authority aforesaid, That, from and after the first Day of next September, in the present Year of our Lord one thousand, seven hundred, and eighty-five, the Legislative Council shall consist of not fewer than thirty-one Members, who shall be nominated and appointed by the King's Majesty, in the same Manner as the Members who now compose the said Council have been nominated and appointed by Virtue of the Act of Parliament passed in that Behalf in the fourteenth Year of the Reign of His present Majesty.

After the 1st Day of next September 1785, the Legislative Council of the Province of Quebeck shall consist of at least thirty-one Members.

FINIS

## PETITION OF SIR JOHN JOHNSON AND LOYALISTS.[1]

Copy of a Petition, intituled, "The Petition of Sir John Johnston, Bart and others in Behalf of the Loyalists settled in Canada." Dated London, 11th April 1785 ; and signed by Colonel Gay Johnson, and others.

To the King's Most Excellent Majesty.

The Petition of Sir John Johnston Baronet, and others, whose names are hereunto subscribed, on Behalf of the Officers and Soldiers of the Provincial Troops and Indian Department, who served under their Command during the late Rebellion ; and of the other Loyalists, their Associates, who have taken Refuge in Canada.

Most humbly Sheweth,

That the Persons of the above Description, animated by your Petitioner's Example, having sacrificed their Estates and Properties in support of Your Majesty's Laws and Government, did faithfully serve in Canada, and on its Frontiers, till the Reduction of these Corps ; when being still actuated by the same Principle of Loyalty and Affection, they, to the number of several Thousands, resolved to settle within Your Majesty's Government, on the Lands assigned them as a Reward for their Services, and in pursuance of the Proclamation of Your Majesty's Commissioners in the year 1776 ; and entered earnestly on the Improvement thereof, with a

[1] Canadian Archives, Q 62A-2, p. 339. See also "Copy of a Memorial to Sir John Johnson, from the Officers and private Men of the late Corps of Loyal Rangers, now inhabitants of the Royal Seigneurie No. 2 above Catara quoui." Q 24, p. 262.

Prospect of making a Provision for their Families, and thereby contributing greatly to the Advantage, Strength, and Security of that Province, and to the Increase of Your Majesty's Revenues.

That the Tenure of Lands in Canada is such as to subject them to the rigorous Rules, Homages and Reservations, and Restrictions of the French Laws and Customs, which are so different from the mild Tenures to which they had ever been accustomed, and which continue to be enjoyed by the rest of Your Majesty's Subjects, has occasioned a general Discontent, and would have induced many to decline accepting their Locations, and to resolve on abandoning their Enterprize, but for the Influence of Your Petitioners, who had first led them into the Service, and on whose Endeavours they relied for obtaining, through Your Majesty's Favour, the Grant of such Terms and Tenures, and the Establishment of the same Laws as they formerly enjoyed under the auspices of Your Majesty's Government. In full Confidence of this happy Event they were prevailed upon to persevere in their Settlements, on which they have already, at some Expence, and much Labour, erected Habitations, and cleared Part of the Lands allotted to them.

For the Attainment of these Objects, so essential to the Happiness of Your Majesty's faithful Subjects, so conducive to the Increase of these new Settlements, and so salutary in their Consequences to the Public, we have, upon mature Deliberation, formed a Plan, which with the reasons in support of it, we humbly presume to submit to Your Majesty's Royal Consideration.

1st It is proposed, that the County of Point Boudet, on the Lake St François, in the River St Lawrence, and from thence Westward, shall be comprehended within One District, distinct from the Province of Quebec, under the Government of a Lieutenant Governor and Council, to be appointed by Your Majesty, with the necessary Powers of internal Regulation, but subordinate to the Governor and Council of Quebec, in the same manner as the Island of Cape Breton now is, to the Government of Nova Scotia. This Territory will include all the Settlements made or intended to be made by the disbanded Corps, and the other Loyalists, while it leaves all French Canada and the French Seigneuries as they were before.

2dly That this Territory shall be subdivided into smaller Districts or Counties, Cataraqui[1] being the Metropolis, with Courts of Justice, to be established by Your Majesty.

In support of such an Arrangement, we beg leave to remark, that it will be productive of the most beneficial Consequences, not only to the Settlers, but to the Nation at large—. Whilst this Territory remains a Part of the Province of Quebec, and the Inhabitants amenable to the Courts of Justice there and at Montreal, the Delay and expence of an Attendance on those Courts, both to Suitors and Witnesses, will be enormous, the distance from Detroit to Montreal being not less than Six hundred Miles,

[1] Afterwards Kingston

without any Road whatsoever, and the water communication exceedingly tedious, precarious, and during the Winter Season absolutely impassable: Crimes will be committed with Impunity, from the difficulty of Prosecutions; and Civil Remedies in effect rendered burthensome from the same causes.

The Inhabitants of this Territory, already amounting to several Thousands, conceive with all Humility that they have the strongest Grounds to hope for such an exempt Jurisdiction as they ask for; They were born British Subjects, and have ever been accustomed to the Government and Laws of England. It was to restore that Government, and to be restored to those Laws, for which from Husbandmen they became Soldiers, animated with the Hope, even in the most gloomy Aspect of Public Affairs, that should they fail in their Attempts to recover their former Habitations by a Restoration of Your Majesty's Government, they would still find a Resource in some Parts of the British Dominions, where they might enjoy the Blessings of British Laws and of the British Government; and they still possess the greatest Confidence, that by Your Majesty's Gracious Interposition they will be exempted from the Burthens of French Tenures, which, however congenial they may be to Men born and bred under them, would be in the highest Degree exceptionable to Englishmen.

The Petitioners have the more Confidence in the Success of their Application, from reflecting that they do not ask for more than has already been granted to their Fellow Sufferers in Nova Scotia, for less indeed than is enjoyed by those who are settled in the Province of New Brunswick, and only to be in the same situation with the Settlers in the Island of Cape Breton: A distinction between men under the same circumstances of Prescription, Confiscation, and Attainder, and who had been invited into the Public Service, and to take Part in the Royal Cause, by the same assurances of Protection, and the same Gracious Offers of Rewards, in the one case continuing to Settlers the Blessings of the British Constitution, and in the other subjecting them to the Hardships of French Tenures and French Laws, they trust will not be permitted by a Gracious Sovereign, who is the Father of all His People.

In consideration of the vast extent of this Territory, along an important and valuable Communication, which is not only the Channel of the Fur Trade, but the Residence of those Nations of Indians who took part in Support of the Royal Cause, the Security, growth, and extension of these Settlements, must evidently be an object of the utmost Consequence, not only as it will most essentially secure and promote that Trade, but as it will preserve those Indians in their adherence to Your Majesty.

The United States are duly impressed with this Idea, and have already manifested a purpose of supplanting us in the Friendship of the Indians; and unless they are counteracted, the British Interest with those Nations will very rapidly decline. We humbly presume that effectually to counteract them nothing would be so conducive as the Establishment of a liberal System of Tenure, Law, and Government in this new Settlement; this

would best contribute to the Growth and Increase of it ; whilst it would stimulate the Adventurers themselves to the most vigorous Exertions, it would invite and encourage Emigration to it ; for as the present Inhabitants before the Rebellion principally resided in the now United States, their extensive connections there, from their Attachment to Your Majesty, their ancient Predilection in favour of the British Government, their Dislike of the Republican Government they now live under, as well as from their Family, and Personal Attachments, would be strongly induced to remove to this new Colony : Should Your Majesty graciously vouchsafe Your Royal Protection to these Settlements, we are confident that in every Competition for the Favour of the Indians Your Majesty will have a decided Advantage, not only from the Influence which many of your Petitioners are known to have over them, but because Numbers of the present Settlers have long been in Habits of Friendship and mutual good Offices with them, sharing the same Dangers, and fighting in the same Cause, and whose former Prepossession would thus, by means of a familiar and constant Intercourse with Your Majesty's Faithful Subjects, be best preserved and rendered permanent.

Upon the whole, whether we consider the Relief and Prosperity of the Settlers as Sufferers in the Cause of their King and Country, for whom Your Majesty has ever expressed so Benevolent a Disposition, or the Advancement of the Settlement, as conducive to the Benefit of the Nation, in either View, and much more in both respects, do we conceive that the Plan now proposed is such an one as will merit and obtain Your Royal Attention and Patronage.

For our Part, we conceive ourselves bound by the strongest Ties to use every Endeavour in our Power to promote the Wishes of these People ; It was by our Example that numbers of them were induced to quit their former Possessions, and to take up Arms, by which they have been deprived of their Property, and Banished from their Country ; and it was from their expectation of the Success of our Representation to their Sovereign, that they have entered upon the arduous undertaking of forming Settlements in a wild and inhospitable Country ;—Well knowing the Disposition of these People, and the Habits in which they have been bred, we think it our Duty most respectfully to declare it to be our opinion, that unless they can obtain the object they are in pursuit of, they will be discouraged from Carrying on their present Enterprize, and prefer some other part of Your Majesty's Dominions, where they may enjoy the Blessings of the British Constitution, but where perhaps they would not be equally useful as they will be in their present situation, should they receive the Protection they solicit.

Your Petitioners, therefore, impelled by motives of Humanity towards a Number of Distressed Families, by a sense of Honor and Justice to a set of deserving Men, who placed Confidence in them, and to whose Eventual Loss of Property and Reverse of Fortune, they consider themselves in a

great Degree accessory, and at the same time by a Conviction of the Public Utility of the Measure, most humbly implore Your Majesty that the Blessings of the British Laws and of the British Government, and an exemption from the Tenures, may be extended to the aforesaid Settlements.[1]

London
11th April 1785.

Robt Leake, Major late 2d Battn K. R. Regt New York
John Munro. Capt late 1st Battn K.R. Regt New York.
P. Daly. Capt late 1st Battn K.R. Regt New York.
Thos Gummersal Capt late 1st Battn K.R. Regt New York.

(Signed)
Gay Johnson, Col. 6 Nations & Superintendant of their Affairs.
John Butler. Lt Colonel Commanding late Rangers.
Eben Jessup, late Lt Col. Commdg King's Loyal Americans.
James Gray, late Major K.R. Regt New York.
Edw Jessup, Major Commdg late Corps of Royal Rangers.

## HAMILTON TO SYDNEY.[2]

*Duplicate*

Quebec 20th April 1785

My Lord

In a former letter to your Lordship, I made an undisguised avowal of my entire ignorance of various matters relative to the state of this Province very necessary to be known by a person in my situation.[3] Tho' I dayly

[1] On the 3rd and afterwards on the 21st March, 1785, Lt. Governor Hamilton first brought to the attention of the Legislative Council, on the basis of petitions and representations made to him, the situation of the Loyalists settled in the various parts of the province, remote from centres at which courts were held, and asked Council to consider measures for their relief. On April 18th, the President of the Council, Mr. Finlay, brought in the "heads of an Ordinance To Grant to the New Settlers at Cataraqui and the Townships above that place, and at Gaspey and the Bay of Chaleurs in the Lower parts of the province, the means of settling differences and recovering small debts in a Summary way." This was strongly opposed by the group which had constituted themselves the guardians of the French Canadian system from the encroachments of the English law and institutions. By granting even a very limited Jurisdiction to the Magistrates in the remote parts of the Province, they claim that it will have a tendency to make a distinction between the new and the old subjects, and to break up the unity of the country and its laws. It would be better to extend to this district the French Canadian system of administration through officers of the Militia, who, with some Justices of the Peace thoroughly versed in the French Laws, would make them acquainted with these laws and convince them that as settlers in Canada they must come under the same laws and ordinances as the other inhabitants of the country. See Minutes of the Leg. Council, vol. D., pp. 286–7. The ordinance as finally passed was of the mildest nature, and under the amended title "For granting a limited civil power and jurisdiction to his majesty's justices of the peace in the remote parts of the province." It merely authorized the Justices of the Peace to deal with the recovery of small deb s between 2 shillings and 6 pence and 40 shillings. See Ordinances 1763–1791, p. 169.

[2] Canadian Archives, Q 24-2, p. 291. When Haldimand returned to Britain in the autumn of 1784, Lieut. Governor Henry Hamilton assumed office as administrator of the Civil Government, while St. Leger was placed in command of the military affairs, with Hope as Commissary General. After the passing of the Quebec Act Hamilton had received his appointment from Dartmouth as Lt.-Governor at Detroit, and was one of those to whom fell the unfortunate duty of employing the Indians to harass the scattered frontier settlements of the English colonists in Pennsylvania and Virginia, during the Revolutionary War. Afterwards, as Lt. Governor of Quebec Province and President of the Legislative Council, by his advocacy of the extension of British institutions in Canada, he incurred the enmity of Governor Haldimand and his friends. Thomas Townshend, afterwards Viscount Sydney, was one of the Secretaries in 1782, but had been replaced by Fox during the Shelburne Administration. He again became Secretary of State for the Home Department, on Dec. 23rd, 1783. He was created Baron Sydney in March, 1783, and Viscount Sydney in 1789.

[3] The letter referred to is evidently that of Dec. 2nd, 1784, in which he refers to his inexperience in the details of the government, owing to the lack of information. See Q 24-1, p. 24. He brings up the matter again in his letter of Jan. 23rd, 1785. Q 24-1, p. 258. Hamilton had made re-

gain some information yet I am apprehensive that my long letters contain too little matter to be interesting.

The minutes of Council will no doubt display the endeavours of some of the Members to bring forward salutary measures, to improve defective Laws, & to render a British Constitution desirable as well as venerable.

These endeavours will appear to have been opposed and counteracted generally by the same persons whose attempts however sometimes fall short, of their aim.

It might seem a hazarded opinion to advance that there are a few persons in this Province who appear desirous that the Canadians should feel such restraints and bear such burthens under English Government as shall keep their minds open to favorable impressions of their former situation under French Laws and an Arbitrary Government. What other principle could operate to prevent the substitution of legal means to the odious partial services by corvées? Why have not the services been regulated and equallized![1]

A principal object for the consideration of the Legislature is the arrival in this Province of numbers of Englishmen or the descendants of Englishmen who must abhor their being subjected to an authority they have been unacquainted with, and to men whose language & customs they are as yet strangers to. Provision by Law should be made to conciliate these people, and if possible prevent complaint by anticipating their grievances.

Until this day the Militia Ordinance remains unamended, tho' its defects are palpable & even acknowledged by those who might reform it— They advance, that this is not a proper period, but, if a time of Peace is not the properest time to relieve a people from the burdens indispensably borne in a time of War, these Gentlemen see not the readyest means of contenting the Canadians, or are wilfully blind to them.[2]

The general terms in which I represented this matter at the opening of the Session not having produced the desired effect, I took occasion in the Private Council to enter more particularly into the subject, at the same time expressing my wish that the Canadians should participate with the Old Subjects in all the advantages of the English Constitution mentioning the various provisions and considerations which had governed the British Legislature in forming the English Militia Law.

One of the Members, a native of this Country advanced, that the new subjects in this Province would Universally prefer their Ancient Govern-

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peated applications to Haldimand before his departure for information and instructions relative to the government of the Province. These being withheld, up to the last moment, he had made application to Sydney for the necessary papers and instructions. See Hamilton to Haldimand, Q 23, p. 392; Hamilton to Sydney, Q 23, p. 389; and Finlay to Nepean, Q 23, p. 438.

[1] There was much protest among the general body of French Canadians, except of course the Seigneurs, against the enforcement of the corvées and other feudal exactions of the older Régime, as enforced by Carleton and Haldimand, and later by Hope within whose functions as Quartermaster General these matters lay. Among numerous papers on the subject may be taken a group giving the French complaints and Hope's reply. See Q 25, p. 438.

[2] The military administration of the Province was in the hands of St. Leger and Hope. For a vigorous criticism of Hamilton's administration after the departure of Haldimand, see Hope to Haldimand, May 26th, 1785. Q 24-2, p. 386.

ment, and return to the dominion of their ancient Master or Masters. This being uttered with Vehemence produced a ferment which I interrupted by addressing myself to the Member, who was (I believe) struck with a sense of his own imprudence, saying, "Monsieur, si ses gens croyent par là "montrer leurs bons sens, du moins ils ne demontrent point ce que demande "leur devoir." What followed from the Members, being likely to produce acrimony and personalities I thought proper to stop them by saying, "brisons la dessus" and urged the further consideration of the business before us.

I cannot help My Lord calling to mind the Marquis de la Fayette,[1] his visit to the Indians, the inherent Attachment of the French to whatever is French, the possibility of a revival of natural prejudices upon the event of a Continental War in Europe, and the indefatigable industry of the rivals of Britain to create for her difficulties and embarrassments : the unrestrained maxims of their policy which all the world has experienced and which they think Justifiable if subservient to their boundless ambition.

My Lord, I give no credit to this Gentleman's assertion, but I will venture to advance that if any thing can effectually hasten the disaffection of the Canadians to British Government, it is the idea which some few entertain and which seems to govern their reasonings and actions, that a military system alone with an adherence to the maxims of a military Government can retain the people of this Colony in their allegiance. An enquiry into the character consequence and unbiassed disinterestedness of these few persons whom I could count up without employing many figures would satisfy your Lordship that they cannot have the confidence of the people at large, wanting fortune, activity, information and true public spirit.

Your Lordship knows, Canada is no longer what it was at the conquest ; it is (as I have reason to think) much altered since the American Independence took place.

Besides the afflux of persons disgusted with American Government, the load of taxes imposed on those who yet remain under it must shew to the Canadians their advantages over them in situation which they were blind to while the American Emissaries during the late rebellion amused them with the florid display of the blessings of American liberty.

Those persons who by their mere negatives to matters brought on in Council, stop, or prolong the proceedings, are not armed with argument to support their naked votes, & lean upon the faith, information and suggestions of those few who have more subtility and plausibility than solid Argument.

The minutes speak for this assertion, but My Lord I must resort to Your indulgence for thus openly & perhaps too warmly treating this subject.

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[1] Referring to the visit of Lafayette and the American Commissioners to various tribes of western Indians. At Fort Stanwix they met with deputies from the Six Nations. See Haldimand Papers, B 58, p. 14; also, Q 24-1, pp. 17 and 43.

I have heard it said that I encourage petitioners and remonstrants—it may be so understood because in the last Session of the Legislative Council, I voted for throwing open the doors of the Council chamber.[1] I receive all Applications from the highest to the lowest, I wish to render Justice to all. If Petitioners are not heard how shall abuses be reformed !—if I have not the confidence of the people at large, I shall be a stranger to their discontents, 'till they break out in murmurs and it may then be too late to apply a Remedy.

The papers which shall be transmitted from time to time I expect will vindicate this reasoning, in the interim Your Lordship will please to Justify me in so much as I have not reaped the advantage of those notices and instructions which I am to hope will come to my assistance from Your Lordship in the short period of the absence of a Superior[2]

I have the honor to be with profound deference and respect

My Lord

Your very obedient and

Very faithful servant

HENRY HAMILTON

The Right Honorable Lord Sydney
One of His Majestys Principal Secretaries of State

## ORDINANCE ESTABLISHING TRIAL BY JURY. ANNO VICESIMO QUINTO GEORGII REGIS.[3]

### Chap. II.

An Ordinance to regulate the Proceedings in the Courts of Civil Judicature, and to establish Trials by Juries in Actions of a Commercial Nature and Personal Wrongs to be compensated in Damages.

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[1] This refers to the proceedings in Council in April, 1784, when a number of citizens of Quebec made application for permission to be present at the debates of the Legislative Council. Grant moved that the application be granted giving his reasons The Council, however, by a vote of 11 to 5 adopted the following position, "The Council have voted that the Gentlemen who requested Admittance to hear the Debates this day cannot be admitted. This to serve for Answer to every future Application." Reasons of dissent were recorded by Lt.-Gov. Hamilton, President of the Council, and Mr. Finlay. Hamilton's reason was, "because our Debates have for object the Benefit of the province." The reason for their votes put forth by the leaders of the majority, was that their oath as councillors required them to keep secret all that might be discussed in Council. Mr. Finlay, in his reasons for dissent, sought to prove that no such limitations applied to the proceedings of Council as a legislative body. See Minutes of Leg. Council, v. D., pp. 162–4.

[2] As a result of the representations of Haldimand and Hope, what came to him from His Lordship was the following, "I have received the King's Commands to signify to you, that His Majesty has no further Occasion for your Services as Lieutenant Governor of the Province of Quebec, and that it is His Royal Pleasure that you do return to England, leaving with Colonel Hope, who is appointed to succeed you, such Instructions and Documents of Government as are in your possession, and which may be necessary for his guidance." (Signed) "Sydney." Q 25, p. 34.

[3] Canadian Archives, Q 62 A-2, p. 601, also Ordinances, 1763–91, p. 149. The Ordinance for regulating the proceedings in the Courts of Civil Judicature, first passed in 1777 (see p. 682) had been renewed every two years, with practically no alteration, notwithstanding the continued efforts to secure the introduction of trial by jury in civil cases in accordance with the 12th article of the Governor's Instructions (see p. 599). But during the session of 1785, under Lt. Governor Hamilton's administration, on the renewal of the ordinance, provision for trial by jury was

SESSIONAL PAPER No. 18

Preamble.

Whereas it is necessary for the Ease and Conveniency of His Majesty's Subjects who may have Actions to prosecute in the Courts of Civil Judicature established in this Province, that the mode of Administering Justice in the said Courts should be clearly ascertained, and rendered as plain as possible :

Be it therefore Ordained and Enacted by His Honour the Lieutenant Governor and Commander in Chief of this Province, by and with the Advice and Consent of the Legislative Council thereof, and by the Authority of the same it is hereby Ordained and Enacted.

Manner of Proceedings in the actions above the Value of £10 Sterling.

Art 1. That in all Causes, or Matters of Property, exceeding the Sum or Value of Ten Pounds Sterling, upon a Declaration presented to any one of the Judges of the Court of Common Pleas by any Person, setting forth the Grounds of his Complaint against a Defendant, and praying an Order to compel him to appear and answer thereto, such Judge shall be and hereby is empowered and required in his separate District to grant such an order, whereby the Plaintiff may have and obtain from the Clerk of the Court a Writ of Summons in the Language of the Defendant, to be issued in His Majesty's Name, and attested by name of such Judge, to be directed and executed by the Sheriff of the District where such Court shall have Jurisdiction, and in which the Defendant may be or doth reside, commanding such Defendant to be and appear in such Court to Answer to the Plaintiff on the day appointed by such Judge in the Order on the Declaration, Regard being had to the Season of the Year, as well as to the Distance of the Defendants abode or Place of Service from the Place where the Court may sit.

Execution not to be issued against Absentees, till security be given.

Art 2. Provided always, That a Copy of the Writ of Summons and the Declaration shall be served on the Defendant Personally, or left at his House, with some grown Person there belonging to the Family, and in so doing the Service shall be deemed sufficient : Provided nevertheless, that if the Defendant be absent in the Upper Country, or lower Parts of the Province, that is to say, When in or upon any Place beyond the Long Sault on the Ottawa River, or beyond the Oswegatche in the upper Parts of the Province, or in or upon any Place below Cape Cat on the South side, and the Seven Islands on the North side of the River S$^{t}$ Lawrence, and where such Defendant hath not been Personally served with such Summons and Declaration as abovesaid, that no Execution shall issue unless the Plaintiff shall give good and sufficient Security, to be approved by the

incorporated. For this the Lt.-Governor received the thanks of the mercantile element of both old and new subjects, in an address of May 9th, 1785. See Q 24-2, p. 398. For details of the proceedings in Council incidental to the amendment of the Ordinance of 1777. See Minutes, v. D., pp. 203–301.

Court, to refund to the Defendant, or his legal Representative as much as the Defendant, appearing by himself or his legal Attorney within a Year and a Day, may be able to set aside and reverse of the said Judgment, by such the Consideration of the said Judgment in the Court where given, as may be presented in the Conditions expressed in the Security to be given as aforesaid for rehearing of the merits of said Cause.

Art 3. That the said Declaration so to be filed shall not be altered or amended after being filed as abovesaid, unless upon Rule of the Court, and upon payment of Costs.

Attachment against the Body when a Debtor is going to leave the Province.

Art 4. That in all and every Case where one or more Judges of any Court of Common Pleas is or may be satisfied, by the Affidavit of the Plaintiff, or his Book keeper or Clerk, or legal Attorney, that the Defendant is Personally indebted to the Plaintiff in a Sum exceeding Ten Pounds Sterling, and may also be satisfied, by the Oath of the Plaintiff or some other Person, that the Defendant is immediately about to leave the Province, and whereby the Plaintiff might be deprived of his Remedy against such Defendant, it may and shall be lawful for one or more Judge or Judges of any Court of Common Pleas to grant a Capias or Attachment against the Body of such Defendant, to be directed to the Sheriff in Manner as aforesaid, to hold such Defendant to Bail, for his Appearance at the Return of such Writ, and in Default thereof to commit him to Prison, there to remain until Special Bail may be given by such Defendant, or until Two Days after execution may be obtained by the Plaintiff, if Judgment be in his Favour.

Art 5. Provided always, That if any Defendant so bound in Recognizance by Special Bail, shall or do surrender himself in Open Court, pending the Action, or at any Time within One Month after Judgment obtained, or do surrender himself unto the Sheriff of the District where such Court may have Jurisdiction, at any Time within Fifteen Days after the day on which the Plaintiff might legally have and obtain Execution by Capias ad Satisfaciendum upon Judgment obtained, that then and in such case such Surrender of the Defendant shall be held, taken, and considered as a Discharge of the Persons bound for such Defendant on Special Bail.

If Defendant does not appear, Judgment to be entered.

Art 6. If on the Day of the Return of the Writ of Summons the Defendant does not appear in Person, or by Attorney (Proof of such Service being produced or made in Court) the Plaintiff shall obtain a Default against the Defendant ; and if on calling over the Action on the next Weekly Court Day the Defendant should still neglect to appear, without any good Reason for such his Neglect, the Court, after hearing and receiving Sufficient

Proof of the Plaintiff's Demand, shall Cause their final Judgment to be entered against the Defendant, and shall award such Costs thereupon as they shall think reasonable, and issue such Execution as the Law, according to the nature of the Case, may direct.

Art 7. Provided always, That every Proof that may be offered by the Plaintiff in Support of his Action and Demand, shall be filed in Court, and remain of Record, in the same manner as if the Defendant had appeared and defended the Action.

If Defendant appears, he is to answer the Declaration.

Art 8. Provided always, That the Defendant upon his Appearance at the Return Day of the Writ, or in Case of Default upon his Appearance at the next Weekly Court after such Return, and after payment of Costs of such Default as abovesaid, shall then or on such other Day, as he may obtain from the Court, make his Answer to the Declaration, either in writing or Verbally, as he thinks fit ; and if the answer be verbal, the Clerk of the Court shall take down the Substance thereof in writing, and preserve the same among the Records of the Court, and in the said Action. And if the Plaintiff doth not appear at the Return Day of such Writ, or appearing doth not prosecute his Action, the same shall be dismissed, with Costs to the Defendant.

Trial by Juries in certain Cases, at the option of the Parties.

Art 9. That all and every Person having Suits at Law and Actions in any of the said Courts of Common Pleas, grounded on Debts, Promises, Contracts, and Agreements of a Mercantile Nature only, between Merchant and Merchant, and Trader and Trader, so reputed and understood according to Law, and also of Personal Wrongs proper to be compensated in Damages, may, at the Option and Choice of either Party, have and obtain the Trial and Verdict of a Jury, as well for the Assessment of Damages, on Personal Wrongs committed, as the Determination of Matters of Fact, in any such Cause : Provided always, That the Agreement of Nine of the Twelve Jurors who shall compose such Jury shall be sufficient and effectual to return a Verdict, and that the same so made and returned, shall be held as legal and effectual to every Intent and Purpose, *inasmuch*, as if the whole Twelve Jurors had agreed therein ; and the Clerk of the Court shall set down the Names of the Jurors on the Register of the Court in every case where Verdicts may be returned as abovesaid : Provided also, That in all such Causes and Actions that may be between His Majesty's Natural born Subjects of Great Britain, Ireland, or the Plantations and Provinces in America, the Juries in such causes shall be composed of such natural born Subjects as abovesaid ; and in all Causes and Actions between His Majesty's Canadian or new Subjects, the Juries shall be composed of such Canadian or new Subjects ; and in all Causes of Actions between natural born Subjects and the Canadians or new

Subjects ; the Jury shall be composed of an equal number of each, if such be required by either of the Parties in any of the above-mentioned Instances.

English Rules of Evidence adopted in Commercial Cases.

Art 10. In Proof of all Facts concerning Commercial Matters, Recourse shall be had, in all the Courts of Civil Jurisdiction in this Province, to the Rules of Evidence laid down by the Laws of England.

Where neither Party is desirous of the Trial by Jury, Proceedings as formerly.

Art 11. Provided always, And it is Ordained and Enacted, That in all causes before the said Courts of Common Pleas, where the Parties, Plaintiff nor Defendant, are neither of them desirous of a Trial by the Verdict of a Jury of and respecting Matters legally within the Cognizance of such Jury, but that such Trial should be by the Deposition of Witnesses, and by Proofs, as at present used in His Majesty's Said Courts of Common Pleas, the Court shall, after issue joined on the Merits of the Cause, in the manner as hereafter expressed, appoint a Day for hearing the Evidence of Parties, Plaintiff and Defendant, and cause the same to be taken down in Writing by the Clerk of the Court in open Court, and signed and sworn to by each respective Witness, save and except as hereafter provided for Witnesses absent by reason of Sickness, or of departing the Province.

Provision for examining Witnesses in case of Sickness, or when about to depart the Province.

Art 12. Provided also, That in case of Sickness, and where the Witnesses, cannot attend the Court to be ascertained by Affidavit, it may be lawful for the Court in such Cases, and of evident Necessity, after Issue joined as abovesaid, to allow and permit that any one Judge, in the Presence of the Parties, Plaintiff and Defendant, or their Attornies, or in their or either of their Absence, after due Notice signified, may take the Deposition of such Witness in Writing, to be signed and sworn to, and certify and Record the same in the said Court, and there to be of legal Effect ; and moreover that such Deposition so taken may be offered and read to the Jury as legal Evidence, if such Cause be to be tried by Jury ; and also in Causes instituted in the said Court, where any Witness may be about to depart the Province, and by which means either party might be deprived of his Testimony, to be ascertained by Affidavit, it shall and may be lawful for any Judge of the said Courts to take the Deposition of such Witness, in presence of the Parties, or their Attornies, in the manner as above Expressed, and the same shall be of legal Effect in every Cause in the manner as abovesaid.

Limitation of Pleadings.

Art 13. And it is further Ordained and Enacted, That every Issue in Law or Fact, to be formed in any Cause in either of the said Courts of Common Pleas, between the Parties, Plaintiff and Defendant, shall be made and completed, by the Declaration, Answer, and Replication, or by the Plea, Answer,

and Replication, in Cases of Abatement and Bar of the said Parties, Plaintiff and Defendant, and that no other or further Pleadings, or Writings by way of Plea, upon such Issue or matter in Dispute, whether of Law or Fact, shall be received or admitted by the said Courts of Common Pleas, as part of and to be put upon Record in any Cause therein instituted, and to be heard and adjudged upon, any Thing to the contrary notwithstanding.

When the Sheriff is concerned, the Process to be served by the Coroner.

Art 14. That every Writ and Process which ought to be served and executed by the Sheriff, where it shall happen, that the Sheriff may be Personally interested, and concerned, shall be served and executed by the Coroner of the District in which such Writ, Process, or execution may issue.

Of Jurors, their Qualifications.

Art 15. That all Merchants or Traders of lawful Age, and also all Persons of lawful Age being householders, or occupying Lodgings of the value of Fifteen Pounds per Annum Rent, shall be held and considered qualified as Jurors, and to serve on Petit Juries.

Sheriffs to make out list of Jurors.

Art 16. That the Sheriff of each District shall make out Lists of all persons so qualified as abovesaid, who may reside in the Cities of Quebec or Montreal, or within the Vicinage or Banlieu thereof, and return the same into the respective Courts of Common Pleas of the District in which such Sheriff may officiate, and in which Return shall be set down the Christian and Surname, and also the Profession, Trade, or Calling, and Place of Abode, of such Persons so returned.

Art. 17. That from the said general List the Clerk of each Court shall make two separate Lists or Books, the one to contain the names of all Merchants, Persons concerned in Trade, or qualified to serve on Special Juries, and the other List or Book to contain the names of Persons of different Occupations so returned on the said General List by the Sheriff as aforesaid ; that the said Lists or Books, when so made, shall be examined by the Judges and Sheriff and corrected, if needful, and shall be of Record and open in the Clerks Office to the Inspection of all Persons, without Fee or Reward.

Art 18. That on all and every Cause where a Trial may be moved for and directed to be taken by the Verdict of a Jury, it shall and may be lawful for the Parties, Plaintiff and Defendant, or their Attornies, to strike a Jury from the above Lists or Books so returned into Court, and completed as abovesaid, in the same manner, and under the same Rules, as Special Juries are struck in the Courts of Record in England, (that is to say) from the first List or Book so formed by the Clerk, and approved by the Judges as abovesaid, in all Causes of Mercantile Dispute,

or Actions of Damages, where the total Amount, Sum, Dealing, or Matter of Account, Agreement or Transaction between the Parties may exceed Fifty Pounds ; and from the second List or Jury Book, where the total Sum as abovesaid may not exceed the said Sum of Fifty Pounds.

Juries to be taken in Rotation.

Art 19. Provided always, That the said Juries so to be struck from either of the said Lists, shall be taken from the same in Rotation, and following each other, by commencing at that Part of that List from whence the former or Preceding Jury was struck or taken ; and also that in all Causes that may appear to the Court before which they are to be had to be of Intricacy, and that ought to be tried by a Jury from the first List, although the Sum or total Amount may not exceed Fifty Pounds, the Judges of such Court may permit and order the Jury to be struck from the first List, the Party applying for such Jury paying the Difference of Fees between Jurors from the first and the second Jury List or Book.

Challenge, or Exceptions to Jurors to be determined agreeable to the Laws of England.

Art 20. That all and every Challenge, or exception to the Pannel, or any particular Juror returned thereon, shall be taken, made and determined upon in Open Court, and conformable to the Laws of England ; the Jurors serving on Special Juries as abovesaid, and struck from the first List or Jury Book, shall have and receive Two Shillings and Sixpence each for every Verdict to be made and delivered, and before returned into Court ; and Jurors struck from the second List or Jury Book, One Shilling each for every Verdict in Manner as aforesaid.

List of Jurors to be returned by the Sheriffs in the Month of June Yearly.

Art 21. That Lists of Jurors, in the manner prescribed by the preceding Articles shall be made, by the Sheriffs returned into the several Courts, and formed in the manner abovementioned in the Month of June in Every Year.

Penalty on Jurors not attending.

Art 22. That all Persons being duly summoned to attend in any of His Majesty's Courts of Common Pleas to serve as Jurors as abovesaid, and neglecting or refusing so to do, shall be liable to, and may be fined by the Said Courts respectively, in any Sum not exceeding Five Pounds, and not less than Ten Shillings, to be levied by Warrant of Distress on the Goods and Chattels of such Person so refusing or neglecting to attend, and to be paid to His Majesty's Receiver General for the public uses of the Province.

Persons exempted from Serving on Juries.

Art 23. That the Members of His Majesty's Council, the Officers of His Majesty's Courts, Officers of the Customs, Naval Officers, Persons employed in the Service of the Post Office, Physicians and Surgeons, and Officers employed in Military Service, shall be exempted from serving on Juries.

Appeals from definitive Judgments.

Art 24. The Party meaning to Appeal from any definitive Sentence or Judgment of any of the Courts of Common Pleas shall sue out a Writ from the Courts of Appeals, tested and signed by the Governor, Lieutenant Governor, or Chief Justice, stating that the Appellant complains of being aggrieved by the Judgment, and therefore commanding the Judges of the inferior Court, or any Two of them, to send up the Original Papers and Proceedings found in the Records or Registers of the Court concerning the same. Such Writ, when presented to any of the Judges of the Court below, shall be allowed by him, if the Appellant has given the requisite security, which Security is hereby understood to be Personal Security, or Bail by Justification, any Law, usage, or Custom to the Contrary notwithstanding. Provided nevertheless, that an Appeal may be had and obtained in manner abovesaid from any Interlocutory Sentence or Judgment which may carry execution by ordering something to be done or executed that cannot be remedied by the final sentence or Judgment, or whereby the Right of the matter in Contestation between the Parties may be in part decided, or whereby final hearing and Judgment may be unnecessarily delayed : Provided always, That such Appeal shall not be granted and allowed, except upon Motion made in the Court of Appeals for that Purpose, and a Rule served upon the other Party, or his Attorney, to shew cause why a Writ of Appeal from such Interlocutory Sentence or Judgment should not be granted :—And it is hereby ordained, that a Rule so served shall have the Effect to stay Execution upon such Interlocutory Sentence or Judgment, till the determination of the Motion for such Appeal ; and if the Writ of Appeal shall be awarded thereupon, and allowed by the Judges in manner as aforesaid, the Clerk of the Court shall proceed to comply with the Order of the Writ, and the Judges, or any Two of them, shall make their Return as therein commanded.

Appellant to file his Reason of Appeal in Eight Days.

Art 25. If the Appellant does not, within Eight Days after the Return of the said Writ, and the Transmission of the Proceedings, file his Reasons of Appeal, the Appellee shall obtain a Rule or Order, that unless the Appellant's Reasons of Appeal are filed in Four Days, the Appeal will be dismissed : And if the said Reasons of Appeal are not filed within Four Days after Service of the said Rule, on the Appellant or his Agent, the Appeal shall be accordingly dismissed with Costs.

Appellee to file his Answers in Eight Days.

Art 26. Within Eight Days after the Reasons of Appeal are filed, the Appellee shall file his Answers thereto ; or if he neglects so to do, the Appellant shall obtain a Rule or Order, that unless the Appellee file his Answers within Four Days, he

will be precluded from filing them after that Period, and if his Answers are not filed within Four Days after Service of such Rule on the Appellee or his Agent, he shall accordingly be precluded from filing them, and the Court will proceed to hear the cause on the Part of the Appellant and proceed to Judgment therein without the Intervention of the Appellee.

The Court upon good Cause Shewn may prolong the time allowed.

Art 27. The said Court of Appeals nevertheless shall and may, upon Application made, and good Cause shewn by either of the Parties, (Notice being given to the other) prolong the Time allowed for filing either the Reasons of Appeal or Answers thereto ; and in Case the Court shall not be sitting at the time when such Reasons or Answers ought regularly to be filed, the Party neglecting shall apply to the Court at the next sitting thereof, and shew his Reasons for such neglect ; and if the Court finds them insufficient, it will as the case may be, either dismiss the Appeal or proceed to hear it without the Intervention of the Appellee as above directed.

Day to be fixed for hearing the Cause.

Art 28. When the Reasons of Appeal, and the Answers thereto, are filed, the Court shall, on the Application of either of the Parties, fix on such Convenient Day for the hearing of the Cause, as to it may seem proper.

Execution to issue in Fifteen Days, if Appeal is not allowed, or Security given.

Art 29. If the Writ of Appeal is not allowed by one of the Judges of the Court below, and a Copy thereof served on the Appellee, or his Agent, within Fifteen Days after any Judgment given in the Court of Common Pleas, Execution shall issue : Provided always, that in Cases of Appeal from Judgments in His Majesty's Court of Common Pleas in the District of Montreal, Execution shall be stayed for the space of Twenty Days, where the Party meaning to Appeal shall lodge good and sufficient Security in the said Court, within Fifteen Days from the date of such Judgment, to prosecute his said Writ of Appeal with Effect ; and that such security shall be taken as in case of an actual Writ of Appeal issued and admitted. And no Appeal shall be allowed or received from the Court of Common Pleas, after the Expiration of one Year from the Date of the Judgment of such Court, save and except such Judgment whereby the Rights of Infants, Absentees, Femes Coverts, or Persons non compos Mentis may be bound.

Limitation of Appeals.

Of Executions.

Art 30. The Execution sued out from any of the Courts of Civil Jurisdiction shall be a Writ issuing in the Kings name, tested and signed, when issuing from the Court of Appeal, either by the Governor, Lieutenant Governor, or Chief Justice, and when issuing from the Court of Common Pleas by one of the Judges of the Court for the District in which it is given, directed to the Sheriff of the District, setting forth the Judgment of the

Nature of the Execution

Court between the Parties, and the kind of Execution which the Law, according as the Case may be, shall direct, whether the same be to take the Body, or to levy a Sum of Money out of any one's Goods and Chattels, Lands and Tenements, or to do any Special Matter or Thing whatever. The Date of the Judgment shall be indorsed on every Writ of Execution, and that Indorsement signed by the Judge.

Personals to be first disposed of, and if insufficient Real Estate to be sold.

Art 31. In all Cases where Execution shall issue against Real and Personal Estates, the Sheriffs shall first dispose of the Personal Property, and if the Proceeds thereof fall short of the Amount of the Judgment, the Real Estate, or so much thereof, as will produce the Amount, shall be Sold for that Purpose.

Manner of selling Personals.

Art 32. Where Moveables shall be seized by the Sheriff under an execution, he shall cause the seizure to be published at the Church Door of the Parish, immediately after Divine Service, on the first Sunday succeeding such seizure, and at the same Time cause to be proclaimed the Day and Place when and where he means to proceed to the Sale thereof, provided that the place of Sale shall be in the same Parish in which the seizure is made ; and provided always that the Sheriff shall not sell Chattels so to be seized and notified, until Eight Days after Notification of Sale as abovesaid. And that at the Request of the Plaintiff the Sheriff may cause Goods and Merchandizes, so seized as abovesaid, to be transported from the Parish where seized to the City of Montreal or Quebec (being in the District where seized) and there to be sold after due Notice as aforesaid; and that Execution so to be issued against Chattels or Personal Estate shall be made returnable at such Day as the Court from whence it may issue shall judge reasonable, and that Execution shall issue against Chattels, or personal and Real Estate, in one and the same Writ, but that such Execution shall be first levied upon the Chattels or Personal Estate, and be returnable as to such first levy, yet nevertheless may have force and Effect, and be returnable at a more distant Period as to the second Levy on Real Estate, for the full satisfaction of the Execution aforesaid.

Manner of selling Real Property.

Art 33. When Lands and Tenements shall be seized by the Sheriff under a Writ of Execution, he shall advertise the Sale thereof Three several Times in the Quebec Gazette, to be on some certain Day after the expiration of Four Months from the Date of the first Advertisement, and proclaim the said Sale at the Church Door of the Parish in which the Premisses are situated, immediately after Divine Service, on the Three Sundays next preceding the sale, and cause a Copy of the said Advertisement to be fixed on the Door of the Parish Church ; and that Lands in Roture shall be sold at the Door of the Church of the Parish

where seized. And the Sheriff is hereby further required to advertise, immediately after the Seizure, that all and every Person having any Claim on Said Lands and Tenements, by Mortgage or other Right or Incumbrance, do give notice thereof at his Office, either before or after the Sale, where the Law makes a Distinction, and to remove all Doubts, the Sale then by the Sheriff, without any other Formality, shall have the same Force and Effect as the Decret had heretofore.

When Two or more Executions issue on Judgments given the same day, they are to be satisfied in the same Proportions unless in case of Oppositions entered at the Sheriff's Office.

Art 34. If Two or more Writs of Execution shall be Issued upon Judgments given the same day, against the same Defendant or Defendants, and so marked on the Writs, such Executions shall have the same Privilege, and be satisfied in the same Proportion : Provided always, that if any Oppositions or Claims may be entered at the Sheriff's Office, either before the Sale of Moveables, or before or after the Sale of Immoveables and where required by Law in the one or the other Case above mentioned, or where the Moveables seized may be claimed by any other Person as to him pertaining, in all such Cases the Sheriff shall return the Same at the proper Periods into the Court where Such Execution issued, that the said Court may, on hearing such claims and Oppositions, and the Parties therein concerned, adjudge them according to Law.

Allowance to the Sheriff.

Art 35. On every Execution the Sheriff shall be allowed all his Disbursements and shall be authorized to charge over and above at the Rate Two and a half per Cent to be deducted out of the Money he levies.

Proceedings in Actions under £10 Sterling.

Art 36. In matters not exceeding or under Ten Pounds Sterling, any Person having a Right of Action against another shall prepare, or procure from the Clerk of the Court of Common Pleas, a Declaration in the following Form, viz.

Declaration.

Quebec / Montreal Day of.. 17. A.B. Plaintiff
C. D. Defendant

"The Plaintiff demands of the Defendant the Sum of
"due to the Plaintiff from the Defendant for which
"said Sum, though often demanded still remains due, therefore
"the Plaintiff Prays Judgment."

This Declaration shall be filed by the Clerk, who shall make a Copy thereof, and at the Foot of such Copy write out a Summons in the Language of the Defendant in the following Form ; viz.

Summons.

Quebec / Montreal ss. George the Third by the Grace of God of "Great Britain, France and Ireland, King, Defender of the "Faith to C. D. Defendant in the above Action. You are "hereby Commanded and required to pay the Plaintiff A. B. "the above mentioned Sum of.....together with

".....Costs, or else to appear in Person, or by your "Agent, before our Judges of our Court of Common Pleas at the "Court House of the City of Quebec / Montreal on the..... Day "of..... when the matter of Complaint against "you as ascertained in the above Declaration, will be heard and "finally determined, otherwise Judgment will be given against "you by Default. Witness the Honourable .....one "of the Judges of our Said Court of Common Pleas, this..... "Day of.....in the Year.....and..... "Year of our Reign."

Services. This Summons shall be signed by one of the Judges of the Court and a Copy thereof, and of the Declaration, served on the Defendant Personally, or left at his Dwelling House, or ordinary Place of Residence, with some Grown Person there, and the Person serving the same shall inform the Defendant or such Grown Person of the Contents thereof.

Non-appearance. If at the Time mentioned in the Summons, the Defendant does not appear (Proof of the Service thereof being produced in Court) the Judges or any one of them, shall hear the Cause on the Part of the Plaintiff, and make such Order, Decree or Judgment, and award such reasonable Costs of suit, as to him or them shall appear agreeable to Equity and good Conscience.

Appearance. But if the Defendant does appear by himself or his Agent, and the Plaintiff or his Agent does not appear, or appearing does not prosecute, or prosecuting fails in his Action, the Judge or Judges shall dismiss the Defendant with Costs. If the Plaintiff makes good his Charge against the Defendant, the Judge or

Judgment. Judges shall give Judgment accordingly and award Costs, and Execution, but the Execution shall not issue until Eight Days after Judgment given.

Execution. The Execution shall go against the Moveables only of the Defendant, which shall be seized by some Person to be for that Purpose appointed by the Court, and sold by him in the manner mentioned in the 32[d] Article of this Ordinance. But the Execut-

Exception. ion shall contain an Exception of the Party's Beasts of the Plough, Implements of Husbandry, Tools of his Trade, and One Bed and Bedding, unless his other goods and Chattels shall prove insufficient, in which case such Beasts of the Plough, Implements of Husbandry, and Tools of his Trade, shall be sold, but not the Bed and Bedding. The Judge or Judges may, if

Debt to be levied by installments. they think proper, order the Debt to be levied by Installments, provided the Time shall not exceed the Space of Three Months from the day of issuing the Execution.

If Defendant secretes his Effects, or op- Art 37. In matters as well above as of or under the Value of Ten Pounds Sterling, if the Defendants shall convey away or

poses the Seizure of them, Execution against the Body.

secrete his Effects, or shall with Violence, or by shutting up his House, Store, or Shop, oppose his Effects being seized, in all such Cases, on due Proof thereof, an Execution shall go against his Person, to be taken and detained in Prison until he satisfies the Judgment, any Law, Usage or Custom to the contrary notwithstanding.

In Commercial matters, Execution against the Body.

Art 38. For the Satisfaction of all Judgments given in Commercial Matters between Merchants or Traders, as well as of all Debts due to Merchants or Traders, for Goods, Wares, and Merchandizes by them sold, Execution shall issue not only against the Goods, Chattels, Lands, and Tenements of the Defendant but also, in case they shall not produce the Amount of the Plaintiff's Demand against his Person, to be taken and conveyed into the Prison of the District, and there detained until he pays the Amount of the Judgment, or otherwise settles with and satisfies the Plaintiff, any Law, Usage, or Custom to the Contrary notwithstanding. Provided, that if the Defendant after remaining One Month in Prison, shall make application to the Court, and make an Affidavit that he is not worth Ten Pounds, the Plaintiff shall pay to the Defendant the Sum of Three Shillings and Six Pence weekly for his Maintenance, as long as he shall be detained in Prison at the Suit of the Plaintiff ; and in Time of Scarcity the said Court of Common Pleas may in its discretion augment the said Allowance, not exceeding the further Sum of One Shilling and Six Pence per Week ; such Payment shall be made in Advance on Monday in every week ; in failure of which the Court from whence the Execution issued shall order the Defendant to be released ; but the Plaintiff shall not be obliged to make such Payment, if he can prove to the Satisfaction of the Court, by which the Defendant stands committed, that the Defendant has secreted or conveyed away his Effects to defraud his Creditors.

Power of Awarding Execution out of one District into the other.

Art 39. When any Person, against whom Judgment shall be given in any of the Courts of Common Pleas shall not have sufficient Goods, Chattels, Lands, or Tenements, to satisfy such Judgment, within the Jurisdiction of the Court wherein such Judgment shall have been obtained, but shall have Goods, Chattels, Lands, or Tenements within the Jurisdiction of the other Court of Common Pleas, it shall be Lawful for the Judge or Judges of the Court wherein Judgment shall have been obtained, to award Execution to the Sheriff of the other District, who after getting the Writ indorsed by one of the Judges of the Court for the District in which the Goods, Chattels, Lands or Tenements are situated, shall execute the same, and make Return thereof, to the Court from whence it issued ; and such

Writ and Return shall be by him sent to the Sheriff of the District from whence the Writ was originally awarded, to be delivered into the Court that issued the same. The Sheriff executing such Writ shall be answerable for his Doings relative thereto before the Court from which it was originally awarded, and the Judges of the Court of Common Pleas for the one District may in like manner award Execution against the Body of a Person residing in the other in Cases where such Execution is by the Law allowed ; and the Sheriff executing the Writ to him in such case directed shall convey the Body of such Person into the Prison of the District wherein such Person shall be arrested.

Art 40. That the Ordinance shall continue and be in force from and during Two Years, from the First Day of May next, and unto the End of the Sessions of the Legislative Council which will be in the Year of our Lord 1787.

(signed) HENRY HAMILTON.

Ordained and Enacted by the Authority aforesaid, and passed in Council under the Public Seal of the Province at the Council Chamber in the Castle of S$^{t}$ Lewis in the City of Quebec, the 21$^{st}$ day of April, in the Twenty Fifth year of the Reign of Our Sovereign Lord George the Third, &c. &c. &c. and in the Year of our Lord 1785.

By the Lieutenant Governor's Command.

## HOPE TO SYDNEY.[1]

QUEBEC 2$^{d}$ November 1785

MY LORD,

Having had the honour in my Letter of the 24$^{th}$ ult$^{o}$ to acknowledge the receipt of Your Lordship's Dispatches inclosing the kings commission of Lieutenant Governor,[2] I have now to acquaint your Lordship that I have this day been sworn into Office and have assumed the Command of His Majesty's Province of Quebec. Business of various kinds that was pending, and which L$^{t}$ Gov$^{r}$ Hamilton could with greater propriety expedite and conclude, induced me to acquiesce with chearfulness in his proposal not to fix upon an earlier day for his resigning the seals of the Province into my hands.

[1] Canadian Archives, Q 25, p. 220. When Hamilton was dismissed, Col. Henry Hope, who had been acting as Quarter-master General, was promoted to the rank of Brigadier General and received the appointment of Lieut. Governor, as announced in a despatch from Lord Sydney, dated Aug. 20th, 1785. See Q 25, p. 35. As he had been a favourite of Haldimand and a strong opponent of Hamilton, the policy of the Government, as may be gathered from this despatch, was immediately changed on his assumption of office.

[2] It was in his letter of Oct. 21st, that he acknowledged this despatch from Sydney. See Q 25, p. 109.

His Majesty and his Ministers, My Lord, are no strangers to the causes which in the years 1774 and 1775, assisted by national and religious prejudices (truly laudable in other parts of the empire) rendered the antient subjects residing in Canada, especially the natives and Emissaries of the other colonies, averse to the Act of Parliament which regulates the Province of Quebec.

It is equally known to His Majesty and Ministers, how far the same causes at the re-establishment of Peace, and after the departure of Gov$^{r}$ Haldimand from the Province last year, engaged this same description of People to establish Committees as in 1774, and to renew Petitions against the present constitution of the Colony.[1] To these causes, My Lord, was added a spirit of Party and faction fomented by various interests and resentments, and which I am warranted in pronouncing had little foundation in views for the public happiness or the liberty and welfare of the people.

It shall be my study therefore, Be assured My Lord, to discountenance and checque this spirit as far as in me lies, and to endeavour by moderation and impartiality to bring back all His Majesty's subjects to a sense of their duty and to a desire to promote the Tranquillity of the Province. The approbation of My Gracious Sovereign, the noblest reward which a faithfull and zealous subject can propose to himself, will be a constant inducement to persevere in the line of conduct which has procur'd it—To merit that approbation is my greatest ambition.

At the same time that I am sensible of the difficulties of my station and present Situation, I have satisfaction in informing Your Lordship, that the contagion of party and the desire of innovation (notwithstanding the Countenance which they have had, and the effects produced by the Emissaries who were sent by the Committees thro' many of the parishes,) can be said to have made but little progress amongst the Canadians in general. Those of them who have join'd in Petitions addresses &c$^{a}$ are chiefly Burghers and shop keepers in the Towns of Quebec and Montreal, dependent upon the British Traders in their circumstances and with a very few exceptions by no means respectable in their characters. The Noblesse, the Proprietors of Lands and the secular Clergy, are sensible I believe of the advantages granted them by the Act of Parliament and consequently wish ardently the continuance of it. Bigotry and the influence of the Regular Clergy viz : "of the Seminaries of Quebec and Montreal and of the other Religious Communities made some respectable people among the Canadians join at first in the mission of Mess$^{rs}$ Adhemar and De Lisle, in consequence of the expulsion from the Province of two Priests who were sent from the seminary of S$^{t}$ Sulpice at Paris ; but they no sooner found that this measure was perverted to civil and Political purposes, than they became sensible of

[1] Referring to the petition of Nov. 24th, 1784, and the work of the Committees of Quebec and Montreal in drawing up the Plan of a House of Assembly, and appointing an agent in London. See pp. 742 & 753 and note 1, p. 753.

their error ; and in the Petition to the King (of which Major Ross was the Bearer) they testified their disapprobation of an House of Assembly and the innovations consequent upon it.[1] I would upon this occasion be more explicit in my sentiments on the present system, if I did not know that His Majesty and Ministers may have the most ample information on that head from the General Officers who have since the conquest of the country had the honor to serve as Governors in it—The Generals Gage, Murray, Sir Guy Carleton and Gov$^{r}$ Haldimand are in England ; their abilities and experience render them in an eminent degree competent to judge of the system which is best calculated to secure this Country, to promote the happiness of the people and to render it useful to Great Britain.[2] Permit me only, My Lord, to suggest with great deference an Opinion that provided the present system is persevered in without any further Parliamentary Interference, an Instruction or permission should be given to His Majesty's Governor or Commander in Chief for the time being, to recommend more than six Canadian Catholics for seats in the Legislative Council—for as this Body has authority to make alterations in the Laws, customs and usages of Canada, the measure appears to me only consonant to equity and could not fail to have the best effects in reconciling the people to such alterations as it may be necessary to make, in the enacting of which an equal or at least a more proportionable number of their Countrymen shall have a voice. Some transactions in the last session of the Legislative Council to my knowledge created these just reflexions in the minds of many of the most moderate and intelligent Canadians—and I have reason to think that such an additional proof of His Majesty's Generosity and confidence would give great satisfaction to the people of Canada, as it would in their opinion secure to their Posterityt, he Possession of their religion, laws and liberty. Another measure which in my humble conception will attach the Canadians still more firmly to His Majesty's Government, would be to establish a corps

[1] See p. 762.

[2] General Haldimand on his return to England drew up a memorandum respecting public matters in the Province of Quebec, which he submitted to the consideration of Lord Sydney. Among the topics discussed were those of Civil Affairs and Deputies from Canada. Under these heads he had this to say:—"6th. The Spirit of Opposition to every Measure which I have proposed in, or out of Council for the King's Service, has been so strongly manifested by some Members of the Legislative Council, and by the Attorney General, particularly since Lieut. Governor Hamilton's arrival at Quebec, who has thought fit to place Himself at the Head of that Party, and the Infection has been so industriously spread by means of the Clergy, and other Agents, that I despair of seeing that mutual Confidence and Harmony subsist in the Council or amongst the People, which is so indispensably necessary to the King's Service and well being of the Province, while these gentlemen remain in Office. The Instances I allude to are many, some of them, particularly the last, are upon record in the Minutes of the Council—This party is composed of the Lieut. Governor, Messrs. Finlay, Grant, Allsopp, Cuthbert, DeLery and Levesque." * * * * * "7th. It is highly necessary to discountenance the Correspondence carried on by the People stiling themselves deputies from Canada, and supported by Mr. Maseres and others, applying for a change of Government by the establishment of a House of Assembly and other changes entirely contrary to the Interests of the King and Happiness of His good Subjects in that Province. The Clergy, whose devotion to the Interests of France has of late been strongly manifested, are deeply engaged in this Party, & unless Measures are speedily taken to cheque the Progress of it, so as to deter the Clergy from persisting, it will, ultimately, be necessary to withdraw some of them from that Country.—" Q 25, pp. 306-308. Carleton afterwards submitted a Memorandum of 20th Feb., 1786, which showed a very great change of mind on his part as he recommended the good policy of removing, unasked, every grievance or burden which would render the position of those in Canada inferior to that of their neighbours of the United States, in order to render any change of allegiance on the part of those in Canada undesirable. See Q 26—1, p. 53.

under certain regulations for the service of the Province officer'd chiefly by Canadians; which would hold out some provision for the younger branches of good families, (the want of which or of some similar resource I have heard them frequently lament,)—might be made to serve many useful purposes—would restore that martial spirit so congenial to their sentiments—and which would be also a Standard for the rest of the Country to repair to, when an enemy might threaten the frontier.

I am aware My Lord that the Loyalists settled between Cataraqui and Montreal have been incited to ask, and have been encouraged to expect a Constitution of Government different from that establish'd in the other Parts of the Province, and that to meet this wish of theirs without at the same time creating jealousy in the other subjects of the Province will be the most embarrassing point for Government in England to settle—but their Numbers are not so considerable nor their desire for a change of the present System so firmly rooted (I should hope) as to render such a measure necessary at least immediately ; as otherwise I foresee that it will create a reasonable source of complaint among the Canadians.

I will in a future letter and when I shall have received the dispatches and Regulations announced to me in Your Lordships letter of the 16th August[1] have the honour to write more fully my sentiments of these and other matters

I have the honour to be My Lord with the utmost respect
Your Lordship's
most Obedient and
faithfull humble servant
HENRY HOPE

The Right Honble Lord Sydney &c &c &c
(original)

## MEMORIAL OF BRITISH MERCHANTS TRADING TO QUEBEC.[2]

The Committee of Merchants Trading to Quebec request the honor of waiting on Lord Sydney as early as convenient, respecting the inclosed Regulations proposed for that Province.

New York Coffee house
8 February 1786

At a General Meeting of the Merchants of London Trading to the Province of Quebec held at the New York Coffee House the 24th January 1786.

[1] Here again he has mistaken the date of the letter referred to, which was that of Aug. 20th already mentioned in note 1, p. 793, in which his appointment was announced and various instructions promised. See Q 25, p, 35.

[2] Canadian Archives, Q 26—1, p. 33. The points dealt with in this memorial indicate not only the chief political reforms required but also the chief points in Canada's external relations at this time. They foreshadowed the discussion for the next three years, and outlined the features dealt with in the extensive Report, or series of Reports of 1787,—the outcome of Carleton's instructions to undertake a systematic investigation of the condition of the Province.

SESSIONAL PAPER No. 18

We the said Merchants whose Names are underwritten for ourselves and agreeable to the urgent and reiterated complaints and Applications of the Inhabitants of the province of Quebeck think it necessary and expedient that a Representation be made to his Majesty's Ministers of the distressed and deplorable State of that Province stating and submitting to them the following Measures which we humbly apprehend to be most likely to prove effectual for quieting the Minds of his Majesty's subjects there extending and securing the Commerce and protecting the property of the British Merchants.

Viz[t]

Laws Constitution House of Assembly.

The present Code of Laws, if the mixture of French and English Laws may be so call'd, not being well understood the Execution of them is subject to much Difficulty and Uncertainty. among other Inconveniencies persons often claim the Right of both and take the Advantage of that which best suits their purpose by these and other means the payment of Debts are evaded and right and property is rendered uncertain and insecure. The Losses the British Merchants have suffered from this evil within the last three years has occasioned the ruin of many and such is the present want of Confidence and want of Credit in consequence of these Disasters, that Common Ruin and General Distress must ensue if some effectual Remedy be not immediately applied.

From the Petitions[1] delivered last Year to the Right Honorable Lord Sydney signed by upwards of 1800 of the principal Inhabitants from the Letters lately addressed to us from the Committees of Quebec and Montreal on this Subject (Copy's of which are hereto annexed)[2] And moreover from our own Knowledge and the particular Information our Connections in that Country afford us, we are clearly and unanimously of opinion that for the Relief and Redress of these evils and the many other Defects of the present Constitution of that Government a provincial Legislature or House of Assembly Established on the principle as in every other British Colony in America will be effectual.

We are equally confident that it is the earnest wish and desire (whatever may have been represented to the Contrary) of the principal as well as the Generality of the Inhabitants of the province both old and new subjects (and to which the Loyal Refugees have also added their testimony by Petition)[3] to be governed by British Laws to be made and administered according to the British Constitution—They found their Claim to it not

[1] Referring particularly to the petition of Nov. 24th, 1784, presented in the spring of 1785; see p. 742.
[2] See below pp. 801 and 803.
[3] See p. 773.

only as British subjects but under his Majesty's special Proclamation of the 7th October 1763.

We conceive no other Form of Government will satisfy and quiet their Minds secure their Rights & protect our property— We therefore feel it our Duty to recommend in the most earnest manner this Measure to his Majesty's Ministers as the most essential for the Security and Prosperity of this valuable province and that that obnoxious and impolitick Law[1] the act for subjecting the British Subjects of Canada to a Government so repugnant to the Ideas of Britons and the British Constitution and was so often cry'd out against as one of the Causes of the Defection of the Neighbouring Colonies may no longer disturb the peace of the Loyal Subjects of this province

Vermont

This new state which is already become very populous and which has no Sea ports but through this province must require considerable quantitys of European Manufactures for which to avoid the Duties and heavy Charge of transporting them by Land through the American States would naturally have recourse to Canada and prefer the British Manufactures to which they have been accustomed were the Communication allowed—We do not conceive such Communication under proper restrictions could be attended with any evil on the Contrary it must be productive of great Trade and Riches to the Province of Quebec and in consequence the increase of British Navigation and Commerce

Newfoundland & The Corn Trade.

Agriculture has been constantly improving in Canada ever since the Country has been under British Government in so much that the Exportation to the European Markets amounted the year preceeding the last War to upwards of Three hundred thousand Bushels of Wheat besides considerable quantitys of Flour and Biscuit sent to Newfoundland and the West Indies and although the necessary Consequences of the War was a temporary Impediment to its progress it has speedily revived again with the Re-establishment of Peace and the Crop of the last year we have undoubted Authority to assert will afford upwards of Two hundred Thousand Bushels of Wheat for Exportation—There can therefore be no doubt of this province being able sufficiently to supply the Newfoundland Fishery with Bread and Flour. The Merchants concerned in that Branch of Trade having particularly desired as the most essential means for the Security of the British Fishery to be precluded from any Commerce or Communication with the American Independent States alledging that the Licences now held out to them for

[1] Referring to the Quebec Act.

importing provisions from thence will be a Cloke for purposes prejudicial to the Fishery and will be availed of by none but what have contraband views since such provisions can be had from the Mother Country or from Canada cheaper than from any of these States We therefore think it our Duty to second the request of those Concerned in the Newfoundland Fishery in order that the Province of Quebec may enjoy the Advantage of supplying its Sister Colony with those Articles of Provision which it is in its power so amply and effectually to do.[1]

Fishery. That as the Merchants concerned in the Trade to Newfoundland have applied to Government for certain Regulations with respect to Duties Bounties &c to countervail the Bounty lately granted by France for the Encouragement of the French Fisherys we conceive it will be equitable and equally beneficial to this Country that the same Advantages that may be granted to the Newfoundland Fishery should be extended to this and the other British Colonies in America.

Wine Fruit & Olive Oil. The Importation of these Articles direct from the places of their growth in Spain and Portugal is also asked by the Newfoundland Merchants—We the Merchants Trading to Quebec (who have repeatedly petitioned the Lords of the Treasury) therefore now renew our Application on this Head—[2]The Inhabitants of Canada when under the French Government were accustomed to Red French Wine as their Common Beverage —the Duties on French Wine in England being so excessive high, the Red Wine of Catalona which is the nearest in point of quality was introduced from Two thousand five hundred to Three thousand Hogsheads of it have been imported into Canada annually— The great Expence of Freight and other Charges attending the bringing this Wine to England to Land, clear and reship for Canada is almost equal to the first Cost and Duty the original Cost being but thirty @ thirty five shillings p hogshead and the Duty Seventeen shillings and sixpence. It has been and must be the means of introducing a fraudulent Trade by which a greater part of the Consumption is and will be supplied in French Wines which Trade will now be facilitated by the Independance of the neighbouring States and therefore we conceive in point of Revenue as well as for the Advantage of this Colony it would be proper to permit the Entry of Wine direct from Spain and Portugal on payment of the same Duties that would remain on it when exported from Great Britain—Fruit and Olive Oil we

[1] The question of the Newfoundland trade and fisheries was a subject of vigorous and prolonged discussion in the British Parliament and press at this time.

[2] Under the Colonial policy embodied in the Navigation Acts of the time, not only must such limited trade as was permitted with foreigners be conducted exclusively in British ships, but the trade must pass through British ports and not directly between a foreign country and colonial ports.

are also of Opinion should be permitted direct from the places of their Growth that the Inhabitants of British America may not be deprived the Advantage of these Articles the former of which in particular is in its Nature too perishable to undergo a double Voyage.

Bounties on Oak Timber Staves & Other Lumber.

The Bounties on the Importation of Oak Timber Staves and other Lumber having expired some years ago, this Branch of Trade has in Consequence of this and the Interruption of the War been almost totally discontinued—The Renewal of the said Bounties for a limited time would we conceive be productive of the most Salutary effects in extending the Consumption of our Manufacturers employing many Ships and saving great sums of Money annually paid to Foreigners particularly for Staves which are now imported only in Foreign Ships from Hamburgh and Stetin on this Subject we refer to our Memorial presented to the Lords of the Treasury the Beginning of the Year 1785.[1]

Hemp.

While this province was under the Government of France—Considerable Quantitys of Hemp were raised—The Climate being extremely favourable and many of the Lands peculiarly adapted to the Growth of this Article we are of Opinion if a Bounty equal to what was given formerly to the American Colonies of £8 p ton was extended to this province it would be the means of reviving and promoting the Cultivation thereof—to the mutual Advantage of both Countries.

The Trade from Montreal to the Indian Country by far the most considerable in the province is greatly impeded for want of proper Vessells to transport the property over the Lakes the same during the War having been restricted to Kings Vessels which still continues. And we are of opinion this inconvenience can only be removed by allowing the Traders to build Vessels for themselves under such Regulations as may be thought proper this was permitted before the War and no Inconvenience was found to arise there-from on the Contrary it was a great Security to the Kings Garrisons for in case of any accident to the Vessels—they have recourse to those belonging to the Traders[2]

We do appoint Mr. Hunter Mr. Rashleigh Mr. Ellice and Mr. Gregory to state these Matters to his Majesty's Ministers

[1] The Colonial timber trade and the bounties thereon grew to be a matter of much controversy for the next half century.

[2] The ostensible object of prolonging the regulation adopted during the Revolutionary War, of requiring all transport on the upper lakes to be conducted in government vessels, was to prevent the fur trade from falling into the hands of the Americans. The Canadian merchants engaged in the trade continually protested against the regulations as unnecessary, expensive and vexatious.

and to request their Concurrence to such Laws as may be necessary for obtaining the Objects desired—

| | |
|---|---|
| Robt Hunter | Jno Brickwood |
| Robt Rashleigh | J. Strachan. J. Mackenzie & Co |
| M & I Gregory & Co | Henry Callender |
| Phyn & Ellice | Jno Paterson |
| Jno Shoolbred | Isaac Todd |
| Dyer Allan & Co | Elias Lock |
| John Strettell | |

## LETTER FROM MERCHANTS OF MONTREAL.[1]

Montreal 2d Novemr 1785

Gentlemen

We had the satisfaction of receiving on the 30th July your esteemed favor of the 26th May, to which we should before now have made Answer, but the hurry of private Business which in the shortness of our Summer season requires the most Assiduous application, & the desire of procuring the co-operation of the Loyalists, in order to transmit you a Petition from them by the fall ships, occasioned the long delay.

In conformity to your recommendation, and in Justice to that respectable and Numerous body of new Settlers in the upper parts of the Province, the substance of our petitions was thrown into a more concise and general form, and transmitted to them for perusal and approbation ; but owing to a Petition which last year had been presented by their Agents in London,[2] they are of Opinion (but without finding any fault with the Language or Spirit of ours) that it will be more proper for them, to wait the result of that Application, than to join in Another, le'ast their Interference should in some degree Militate against the Measures wch their Agents may be pursuing.—We shall transmit you Copy of the Advice which one of the most respectable and Intelligent amongst the Loyalists received from London on this Subject.

The Letter is dated 15th June 1785 saying—

"The Gentlemen from Canada now in London, who intend settling in "the upper parts of the Province (the writer of that Number) have presented "a Petition to his Majesty, praying for an Alteration of the present mode "of Government, and the Tenure by which they hold their Lands.—or "that the upper parts of the Province including all the new Settlements,

[1] Canadian Archives, Q 26—1, p. 42. English and French versions of this letter are given in parallel columns, the English copy being signed by the English merchants and the French copy by the French merchants.

[2] See p. 773.

"may be erected into a new Province, with a Government similar to the "Royal Governments before the Revolution in America ; but no Answer "has as yet been given, I suppose it will be laid before the two Houses of "Parliament for their consideration."

From this Paragraph you may see that their Views are directed nearly in the same Manner as our own ; and we should think that by Uniting with their Agents at home, it might prove one of the Most effectual Measures for Obtaining our earnest desires,—a House of Assembly.—However supine and indifferent about modes of Government the Canadians may be esteemed, they Assuredly would consider themselves highly insulted and wronged, were they to see a part of the Province of which they are Inhabitants erected into a New and free Government, whilst they were continued, under the disgraceful System of being excluded from the smallest participation in their own Legislation.—

From the different Conversations you mention to have had with Lord Sydney on this Business, we had hopes that some steps would have been taken by him in Order to procure the free Suffrages of the People here ; but the Measure lately adopted of recalling Lieu[t] Governor Hamilton and placing the power of Governor & Commander in Chief as well of the Province as of the Troops in the hands of a Military Gentleman,[1] indicates so strongly the Aversion of the Minister from those means, as to preclude every hope that the People at large will be called upon to give their Voice with freedom,—for how many are to be found even amongst the higher and more independent Classes of Mankind who will give their opinion freely in Opposition to that Person who has the Power of commanding them at pleasure ; fixing without control the duration of their Servitude and the recompence of their Labour And, to enforce his Orders has a Military Force under his own immediate direction—You will easily suggest that the present is not a fit season for obtaining new Signatures, but tho' we shall wait with patience for a discussion of our Petitions, we shall never lose the Object of them in View.

Our Requests are Rights belonging to us as British Subjects which sooner or later will We hope be granted ; for we cannot allow Ourselves to think that the good sense of the British Senators will for ever continue the unwise and disgraceful difference which at present distinguishes this Province from all the other Colonies belonging to Great Britain—

It affords us the highest satisfaction that your opinion coincides with Ours, and that you are resolved to prosecute the prayer of our Petition with firmness and Temper.—

We are happy that you consider the welfare of the Province so connected with your own Interests as to render both Objects of your Steady pursuits

[1] Brigadier General Henry Hope. See note 1, p. 793.

and we trust we shall derive most effectual assistance through your Means towards the Completion of our wishes.—We are with the greatest Esteem & Respect

Gentlemen

your most obedient & very humble Servants

James McGill
Simon McTavish
Benj$^{n}$ Frobisher
Rich$^{d}$ Dobie
James Finlay
Nicholas Bayard

Bouthillier
Jn De Lisle
P$^{re}$ Guy
Dumas
S. Martin
M$^{ce}$ Blondeau
Perinault
P$^{re}$ Foretier
Jf. Perrault
Jh. papineau

To Mess$^{rs}$
Phyn & Ellice
Robert Rashleigh & Co
J Strachan J McKenzie & Co
Dyer Allan & Co
Rob$^{t}$ Hunter
John Strettell
John Paterson
London

ENDORSED : In letter from Committee of Quebec Merch$^{ts}$ of 8. February 1786

## LETTER FROM MERCHANTS OF QUEBEC.[1]

Quebec 9 Nov$^{r}$ 1785

Gentlemen

We received your favor of the 26$^{th}$ May last Concerning the Petitions from this Province transmitted you last Spring—And are sorry to see that Ministry seem to be inimical thereto—

We intended applying to the Country parishes to procure more Signatures to these Petitions—but as you mentioned in your Letter that Government meant to send out orders that the Sense of the whole people should be taken on the Substance of them[2] We thought it better to wait for that General decision, well Convinced it would turn out in our favour—The Arrival of the Antelope packet awaked us from that delusive Dream. The removal of Mr. Hamilton from the Government and placing the Civil and Military

[1] Canadian Archives, Q 26—1, p. 48. This also is given in English and French; the English copy being signed by the English merchants and the French by the French merchants.

[2] See despatch of Sydney to Hope which follows this document, as also the references to this matter in the debate on the bill introduced by Mr. Powys, M.P., given in note 2, p. 767.

power in the hands of the same person[1] Convince us that the Ministry mean to oppose any Steps we should take.

We explained to you in our Letter of last Spring the nature of the Counter Petition[2]—And we Cannot yet persuade ourselves that the Minister will produce it. The promoters of it in this Country conducted it in such a private manner— that we never could find out who signed it. If it is produced we will thank you for a Copy of the Names that are at it, having reason to suppose that undue means were used to procure Signatures—

We inclose you Letter from the Committees of Montreal they have so clearly expressed our Ideas that we have very little further to say on the subject—

As the Committee of this place we return you our thanks for the trouble you have already taken in the Affair—And hope you will pursue it with that Steadiness which the importance of the fate of a whole Province where your own Interests are so deeply engaged demands.

It is likely the Constitution of the Province will be absolutely fixed in the Course of this Winter—every exertion therefore on your part will be necessary to procure for us that freedom we so earnestly desire, which is the birth-right of every British Subject and which is so essential to the welfare and prosperity of the Country. The people here look up to you for Support and they hope you will be able to procure the Aid and Assistance of the City of London and of the other great Commercial Towns of the Kingdom to preserve this province, now the most valuable on the Continent of America belonging to the British Empire, from being kept in ignominious Slavery

We request you will introduce our Petitions at the opening of this Sessions into the two Houses of Parliament and instruct those Members that Carry it up to insist positively on the prayer of the Petition for a House of Assembly We wish the Sense of the House may be taken on that point having great Confidence on the Patriotism and Public Spirit of the British Senate—Many of its Members have already stood forth in our favour and demanded the Repeal of the Quebec Bill.

We think it will be necessary to support our petitions by the Examination of such Gentlemen from this Country as are in London at the Bar of the Two Houses of Parliament

We flatter ourselves our late Worthy Lieut. Governor Hamilton will give a just report of our Conduct in the Affair and that so far from Stirring up Sedition and disturbance in the Province as has been insinuated[3] We

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[1] See note 1, p. 802.

[2] See p. 754.

[3] As in Hope to Haldimand, Q 24-2, p. 386; and Haldimand to Sydney, see note 3, p. 795.

conducted every thing relating to these Petitions with the greatest Harmony and Moderation

We have the Honour to be with great Respect
Gentlemen
Your most Obed$^{t}$ Hbl$^{e}$ Servt$^{s}$

| | |
|---|---|
| James Johnston | Deschenaux pere |
| Adam Lymburner | L$^{s}$ Germain fils |
| Robert Lester | L$^{s}$ Turgeon |
| W$^{m}$ Lindsay | Dénéchau |
| Jn$^{o}$ Purss | Dubau |
| John Antrobus | Ch. Pinguet |
| Ch: | Louis Dumére |
| | Perrault l'ainé |
| | Pommereay |

Mess$^{rs}$
Rob$^{t}$ Hunter
Phyn & Ellice
Robert Rashleigh & Co
J. Strachan J. McKenzie & Co
Dyer Allan & Co
John Strettell
John Paterson
& others

ENDORSED : In Letter from Committee of Quebec Merch$^{ts}$ of 8 Feby. 1786.

## SYDNEY TO HOPE.[1]

WHITEHALL 6$^{th}$ April 1786

Lieutenant Governor Hope.
Quebec.

Sir,

The Season of the Year not having admitted of a direct communication with Quebec since you were invested with the Office of Lieu$^{t}$ Gov$^{r}$ of that Province, but through Channels which were at best very precarious, I have deferr'd till this moment acknowledging the receipt of your Letters from 1 to 10.

Before I enter minutely into the several subjects contained in those Letters, I cannot omit to acquaint you, that His Majesty upon a perusal of them express'd himself well pleased with the clear and distinct manner in which the several points of business are arranged ; and I may farther add, for your satisfaction, that your sentiments upon Matters in general relating to the

[1] Canadian Archives, Q 26—1, p. 73. Indian affairs were in a very critical condition at this time, there being once more, as in the days of French and English rivalry, two powers seeking to obtain a predominant influence with the Indians. This despatch indicates the policy of the British Government at the time.

Province are directly correspondent with the Opinion entertained by His Majesty's Servants here.

The Affairs of the Indians have lately been a Subject of much Consideration—Joseph Brant, who arrived in the Packet with the late Lieut Governor, has been charged with the transaction of two points of Business;[1] the first to demand restitution for Losses sustained by the depredations of the Americans during the War ; and the second, and more material Object, to be satisfied how far they might depend upon the support of this Country in case they should be engaged in Disputes with America, respecting their Lands.—

With regard to the first of these points, His Majesty's Ministers have every reason to think, that it has been concluded in a manner that will be entirely satisfactory to the Indians, and they cannot but conclude that the liberal manner with which this application has been treated, must impress them with a very favorable Opinion of Our friendly disposition towards them. The Losses of the Mohawks according to the Schedule certified by Sir John Johnson, and Lieut Colonel Claus, amount to about £15,000 Sterlg. in which are included those sustained by Joseph Brant and his Sister. It has not, however, upon many accounts been thought advisable to admit their right to Compensation for Sufferings, which are really nothing more than the usual effects of War, and which they have shared only in common with His Majesty's Subjects, But it has nevertheless been judged expedient, not only to gratify them for their former Services, but to endeavour to secure their future friendship and confidence. Upon this ground a Sum equal to the amount of the Losses sustained by Joseph and his Sister has already been paid to him, to enable him to dispose of it to advantage in the purchase of Merchandize previous to his Departure, and Assurances have been given that a favorable Attention will be shewn to the Claims of the rest of the Indians still continuing attached to this Country, who have been Sufferers in the same Way.

Notwithstanding the Reports which have been circulated by the American Deputies sent into the Upper Country, His Majesty's Ministers are of Opinion, that they will hardly attempt by force to remove the Indians whilst they continue united, from the possession of the Lands which they at present inhabit within the Territory to which His Majesty, by the late Treaty of Peace, has relinquished the Sovereignty, much less to commence Hostilities for the Possession of Detroit, whilst there can remain even a probability that the Indians will not lend their Assistance in endeavoring to effect it.

His Majesty's Ministers observe, that the Meeting between the Deputies from the several Tribes, and the Deputies from Congress will take place some time this Spring, though probably not till after the arrival of Joseph Brant, and much will depend upon the turn which Matters will

[1] See Brant's communication of his credentials to Sydney in London, Jan. 4, 1786. Q 26—1, p. 1.

then take. His Majesty's Ministers rather imagine that no Disputes will arise at this Meeting but that the Americans will leave them in the possession of their Hunting Grounds until a more favorable opportunity shall hereafter offer for effecting the purposes which it is supposed that Congress have ultimately in view, and if that should be the Case no difficulties will immediately occur ; but if contrary to their expectation the Indians should not accede to any Proposals that may be made to them by the American Deputies, or cannot be prevailed upon peaceably to accept of the Asylum already directed to be offered to them, within the Province of Quebec, Our Situation will in some degree become embarrassing. To afford them open and avowed Assistance, should Hostilities commence, must at all Events in the present State of this Country be avoided; But His Majesty's Ministers at the same time do not think it either consistent with justice or good Policy entirely to abandon them, and leave them to the mercy of the Americans, as from motives of resentment it is not unlikely that they might hereafter be led to interrupt the Peace and Prosperity of the Province of Quebec. It is utterly impracticable for His Majesty's Ministers to prescribe any direct line for your Conduct should matters be driven to the extremity, and much will depend upon your judgment and discretion in the management of a Business so delicate and interesting, in which you must be governed by a variety of Circumstances which cannot at this moment be foreseen.

The inclosed Copy of a Letter to Joseph Brant, in answer to his representation, will explain to you the extent of the Engagements entered into on this Side of the Water, with which he will proceed in the course of a few days to meet his Brethren, and from his professions of Attachment to this Country, His Majesty's Ministers are led to expect that he will from time to time furnish you with the earliest notice of any thing material that may occur which you will communicate to me in the most expeditious way, for His Majesty's Information, that Instructions may be transmitted to you for your guidance upon such measures as it may be judged adviseable to adopt.

His Majesty's Ministers are well aware of the Efforts that have been made by a certain description of People to raise Discontents in the Province of Quebec, and to bring forward Petitions to the Throne against the present constitution of the Colony, But notwithstanding these proceedings, no measures whatever are intended to be taken for a change of the System of Government, until Sir Guy Carleton shall have consulted the Opinion of the Province thereupon, and clearly ascertained that such a Change will be attended with material advantage to its general Interests and Happiness.—His Majesty feels the strongest disposition to give His Canadian Subjects every proof of His Confidence, and will forthwith take under His Royal Consideration the Measure you recommend of increasing their Numbers in the Legislative Council,[1] which indeed had been in contemplation previous to the receipt of your Letter upon that head.

[1] See Hope to Sydney, p. 793.

The flourishing State of the new Settlements affords His Majesty great satisfaction, not only on account of the Advantages which the Province in general will derive from so valuable a Body of People, but from an interested concern for the Welfare and Happiness of Persons who from their Loyalty and Attachment to His Majesty's Government have merited His Royal Countenance and Protection. The Lords of the Treasury I hope will provide the additional Supplies which you recommend for their Subsistence, and I have no doubt but you will receive Instructions from their Lordships on that point by this conveyance.[1]

However desirable it might be to encrease the Military Force in the Province of Quebec, I cannot at this moment encourage you to expect that the Measure will be adopted from the weak State of the Army remaining in this Kingdom, and the various Services which call for their execution ; Your Suggestions relative to the raising Colonial Regiments[2] it must be allowed are worthy of consideration, and will be attended to at a proper time, when the State of the Province again becomes the Subject of discussion.

In the present posture of Our affairs with the American States, His Majesty's Ministers do not judge it adviseable to renew the Office of Lieu[t] Governor of Detroit, particularly whilst the Command of the Post continues in the hands of Major Ancram, who is represented to be a discreet and intelligent Officer.

His Majesty's Ministers could have wished that the Expence of the Quarter Master General, Barrack and Marine Departments had not been encreased without their concurrence ; they have, however, from a desire to show countenance to your Proceedings in every possible way, consented that the present Establishment shall continue until final Arrangements shall be made for the execution of the Duties of those Departments, which are now a Subject of Consideration. At the same time I must acquaint you, that they feel themselves under the necessity of refusing a Compliance with your requisition for the Allowance of Aids de Camp, as the admitting an Innovation of that Sort, inconsistently with the regular Line of Military Service would not only be productive of Jealousies and Discontents, but in many respects be extremely prejudicial to His Majesty's Service.[3]

I am &c[a]

SYDNEY

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[1] See Hope to Nepean, Q 25, p. 29, and reply, ibid. p. 33.
[2] See Hope to Sydney, p. 793.
[3] See Hope to Sydney, Q 25, p. 237. In this he states that he has appointed two aids-de-camp, whom he expects to be paid.

SESSIONAL PAPER NO. 18

## LETTER TO BRANT ENCLOSED IN FOREGOING DESPATCH.[1]

Colonel Joseph Brant . Whitehall 6th April 1786

Sir,

The King has had under His Royal Consideration the two Letters which you delivered to me on the 4th of Jany last[2], in the presence of Colonel Johnson, and other Officers of the Indian Department ; the first of them representing the Claims of the Mohawks for Losses sustained by them and other Tribes of Indians from the Depredations committed on their Lands by the Americans during the late War ; and the second expressing the desire of the Indian Confederacy to be informed what Assistance they might expect from this Country in case they should be engaged in Disputes with the Americans relative to their Lands situated within the Territory to which His Majesty has relinquished His Sovereignty.

Were the right of Individuals to Compensation for Losses sustained by the Depredations of an Enemy to be admitted, no Country however opulent it might be, could support itself under such a Burthen, especially when the Contest happens to have taken an unfavorable turn ; His Majesty upon this ground conceives that consistently with every principle of Justice, He might withold His Royal Concurrence to the Liquidation of those Demands. But His Majesty in consideration of the zealous and hearty exertions of His Indian Allies, in the support of His Cause, and as a Proof of His most friendly Disposition towards them, has been graciously pleased to consent that the Losses already certified by His Superintendant General shall be made good, that a favorable Attention shall also be shewn to the Claims of others who have pursued the same System of Conduct, and that Sr Guy Carleton, His Governor General of His American Dominions, shall take Measures for carrying His Royal Commands into execution immediately after his Arrival at Quebec.

This liberal Conduct on the part of His Majesty, He trusts will not leave a doubt upon the Minds of His Indian Allies that He shall at all times be ready to attend to their future Welfare, and that He shall be anxious upon every occasion, wherein their Interests and Happiness may be concerned, to give them such further Testimonies of His Royal favor and countenance, as can, consistently with a due regard to the National Faith, and the honor and dignity of His Crown, be afforded to them.

His Majesty recommends to His Indian Allies to continue United in their Councils, and that their Measures may be conducted with temper and moderation from which added to a peacable demeanor on their part, they must experience many essential Benefits and be most likely to secure to themselves the possession of those Rights and Privileges which their Ancestors have heretofore enjoyed.

I am &ca

SYDNEY

[1] See Q 26—1, p. 80.
[2] See Q 26—1, p. 1.

## SYDNEY TO HOPE.[1]

Lieutenant Gov[r] Hope

WHITEHALL 6[th] April 1786

Sir,

After the communication which I made to you in my Letter of this date of His Majesty's gracious approbation of your Proceedings in the Execution of the Duties of your Station, as well as of the favorable Opinion which His Majesty is pleased to entertain of your Ability, It cannot be supposed for a moment that any arrangement which may have occasioned a Change in your Situation can proceed from an idea of a deficiency on your part of those necessary Qualifications which ought to be possessed by a Person holding the distinguished Station in which you have been placed, or from any other Cause that can affect Your Character.

For some time previous to your Appointment to the Office of Lieutenant Governor of Quebec, His Majesty had it in contemplation to appoint a Governor General over his remaining American Dominions, not only with the view of uniting their general Strength and Interests, but for the more ready determination of Subjects upon which instant decision might be requisite. His Majesty upon this Idea has been pleased to fix upon S[r] Guy Carleton, an Officer of High Rank and Character in His Military Profession, and peculiarly adapted by long experience for the regulation of Legislative, as well as Commercial and Political Concerns, to fill this very important Office.[2]

To complete the New Arrangement and invest S[r] G. Carleton with the Authority which His Station necessarily requires, it has been found expedient to reduce the Powers which have hitherto been exercised by the Governors of Quebec, Nova Scotia and New Brunswick, as well as the designation of their Offices, by stiling them Lieutenant Governors, permitting the two latter nevertheless to enjoy the Emoluments heretofore annexed to their late Situation, and placing the Lieutenant Governor of Quebec upon a similar footing. It would be very desireable to His Majesty if in this Arrangement you could be accommodated agreeably to your Wishes, but under certain peculiar Circumstances His Majesty has thought it right that the Choice of the Lieutenant Governments of New Brunswick & Quebec should be left to Col[o] Carleton.[3] If he should prefer his present Situation

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[1] Canadian Archives, Q 26—1, p. 82.

[2] The following, from the *London Gazette* of April 15th, 1786, shows how this intention was carried out. "The King has been pleased to appoint Sir Guy Carleton, Knight of the Most Hon. Order of the Bath, to be Captain General and Governor in Chief in and over the province of Quebec, in America in the room of Sir Frederick Haldimand, K.B.

"The King has also been pleased to appoint the said Sir Guy Carleton to be Captain General and Governor in Chief in and over the province of Nova Scotia, including the islands of St. John and Cape Breton, in America, in the room of John Parr, Esq.; and of the province of New Brunswick, in America, in the room of Thomas Carleton, Esq.

"The King has also been pleased to appoint the said Sir Guy Carleton to be General and Commander in Chief of his Majesty's forces in the above mentioned provinces and islands, and within the island of Newfoundland." See also Quebec Gazette, Aug. 17, 1786.

[3] Col. Thomas Carleton was a brother of Sir Guy Carleton, and was at this time Lt. Governor of New Brunswick.

which from the good opinion and Confidence he has acquired of the Inhabitants of the Province, and the wisdom of his Measures for the increase of its Prosperity, it is hoped he will do, His Majesty most readily concurs in your Continuance at Quebec. But in Case Col. Carleton should be desirous of a change of Situation His Majesty has been graciously pleased to authorise me to offer to you the Lieutenant Government of New Brunswick.[1]

I shall defer all further proceedings upon the Matter, so far as you are concerned, until I receive a Communication from you of your Sentiments upon it. In the mean time I wish you to believe that I am with great Truth and Regard.

I am &ca

SYDNEY

## MEMORANDA FOR INSTRUCTIONS.[2]

A What Policy should the Governor Gen[l] observe, with the United States?

A What, with each seperate State?

B What with the Indians?

C What Policy should He observe with Vermont? how far may He permit, or connive at an internal trade, or intercourse with the people of that Country, or of the other States, till circumstances are ripe for an arrangement? Instructions, suited to the line of conduct adopted, should be sent to the Officers of the Customs—

D A plan of secret intelligence should be formed, so that nothing hostile to the Kings American Dominions may be resolved on, nor even proposed, but what shall be quickly conveyed, & reported to the Governor Gen[l]—

Some general Ideas on these heads may be given, that the Kings Government in America may not deviate too far, from what shall be judged most advisable at home.

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[1] This appointment he promptly declined, virtually saying that he would take Quebec or nothing. See Hope to Sydney, June 27th, 1786, Q 26—2, p. 490. He was permitted to remain at Quebec as Lt. Governor and President of the Council, while Col. Carleton was promoted to be Brigadier General and Commander of the Forces, under his brother Lord Dorchester.

[2] Canadian Archives, Q 26—1, p. 57. These memoranda were intended at once to solicit instructions from the Home Government and to guide its policy with reference to the mutual relations of the various provinces of British North America. A previous memorandum, of Feb. 20th, 1786, marked "private," though dealing mainly with military matters yet relates to some of the points here dealt with and shows a remarkable change of mind on Carleton's part with reference to the possible future of the remaining colonies. After pointing out the wisdom of cultivating friendly relations with the continent as a whole, he turns to the remaining colonies and says that, in view of their situation; "Good policy therefore requires we should leave as little for them to gain by a separation as possible. All the advantages offered to Congress for a reconciliation should be reconsidered, and such of them as may now be judged adviseable to grant, and are wished for by the Provinces which remain in their allegiance, cannot be granted too soon. That these benefits may have their proper effect, they should be conferred unasked, as soon as may be and as flowing spontaneously from the benevolence of Government, it would be unwise to withhold from dutiful obedience, what might have been obtained by tumults and rebellion, or by delay, to let leaders of Sedition usurp from Government the gratitude and confidence of the people. All Burdens on Land which may serve to excite animosities against the Crown should be taken off, but the regulations which promote the culture of soil, or check the evils of large Grants should remain. A power to protect the people from all vexations, more particularly from those which proceed from men in office, should be lodged on that continent, that a sullen discontent may not have time to spread" See Q 56—3, p. 609. Given also in Q 26—1, p. 53.

Tis presumed orders will be sent to all the Lieu[t] Governors to correspond with the Gov[r] Gen[l], & to send him every necessary information.

Tis recommended that the Lieu[t] Governors take the lead, on all occasions where the interests of the people are concerned ; that the Kings Government may assume its rights, and stand forth the Protectors of the People, of their Interests, and of their Liberties.

Tis recommended that an intelligent member from each Council, & One from each Assembly be sent to meet the Gov[r] Gen[l] in May next, & report to him the State & present condition of their respective Provinces ; & to consult how most effectually to carry into execution The Kings benevolent intentions ; to arrange & prepare all such measures as they shall judge most likely to promote the security, happiness & prosperity of the Kings American Subjects, in order that the result of their Joint deliberations may be submitted to the wisdom of His Majesty's Councils.

DORCHESTER

July 28[th] 1786

Endorsed : North America

To serve as memorandums—

## PLAN OF GENERAL DIRECTIONS FOR SIR GUY CARLETON[1]

To fix the province in which His Constant Residence is to be to direct his reporting as soon as possible, the real state of the opinion of the people in general, with respect to the applications that have been made to alter the present Constitution of Quebec, & whether the old [Canadian] subjects wish any and what alteration.

to send the Numbers of Old and New Subjects, and of those in particular, who have taken refuge from the United States

to give an opinion whether there should be any division of the province, where the division is to be made—what Number of refugees reside beyond the proposed division—what the Constitution of the proposed province should be and whether, if it is expedient to put it upon a different footing from that of Quebec and more analagous to that of the other British possessions, The Loyalists and disbanded Corps should not be settled there preferably to Quebec.

to report a State of the Trade of Quebec both Internal and External—Whether in Case a division of the Province takes place, it may not be the means of promoting a Connection with the United States, as they may more easily get supplies thro those States than from Quebec whether the

[1] Canadian Archives, C. O. 42, Vol. 18, p. 152.

This and the following document are undated and unsigned, but are found among a number of papers under the heading "Quebec, Dispatches and Miscellaneous, 1786." Whether they were the outcome of conferences with Carleton himself, or what connection he had with them is uncertain. They appear, however, to be in harmony with the preceding memoranda, and it is significant that the investigations and reports which are suggested are in line with the inquiries which he immediately set on foot after returning to Canada. Portions of the reports presented in virtue of his directions are given below. See pp. 869-945.

Indians are supplied from the U States, and if so, what steps may be necessary to prevent it, & thereby preserve an Influence over them.
Whether the Indians or any of them continue settled within the Territories of the United States, & if so whether any & what measures should be taken to remove them within ours
To report once every Year a State of the different Provinces under His Government, whether any & what regulations are necessary to promote the Improvement and Commerce of each, and what alterations may be necessary in the Government and Police

If any emigration is to be encouraged or coñived at from the United States, directions must be given to S$^{r}$ G. how far he must act upon such an occasion

These Instructions to be confidential and in Case of His decease or removal not to go to His Successor in the Government unless vested with the Government of the three distinct provinces
Endorsed: for Sir G. C.

## DRAUGHT OF PARTICULAR INSTRUCTIONS TO CARLETON[1]

Particular Instructions to our Trusty and Welbeloved Sir Guy Carleton, Knight of the Order of the Bath, Our Captain General and Governor in Chief, in and over Our Provinces of Quebec, Nova Scotia including Our Islands of Saint John and Cape Breton, and New Brunswick in America; and of all Our Territories respectively dependant thereupon:
Given at our Court at Saint James's the day of
1786 and in the twenty sixth Year of Our Reign.

First Whereas by Our Seperate Commissions under Our Great Seal of Great Britain, bearing date the

> We have constituted and appointed You, to be Our Captain General and Governor in Chief, in and over Our Provinces of Quebec, Nova Scotia including Our Islands of Saint John and Cape Breton, and New Brunswick in America, and of all Our Territories respectively dependant thereupon, It is Our Will and Pleasure that you do in all things comply with the regulations and directions contained in Our said seperate Commissions, and the different Instructions given you therewith.

2$^{d}$ It is Our Will and Pleasure that Your usual residence shall be in Our Castle of Saint Lewis, in Our City of Quebec, from whence you are occasionally, not only to Visit the several parts of that Province, whenever and as often as the good of Our Service, the Welfare of Our Subjects, and the Safety and defence thereof, may necessarily require Your presence; but

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[1] Canadian Archives, C.O. 42, Vol. 18, p. 154.
As will be observed, this draught of special confidential instructions follows up the suggestions in the preceding document.

You are to repair to Our other provinces under Your Government, and the Islands of Saint John and Cape Breton, and take upon Yourself the Command and Government thereof, whenever You shall Judge it expedient so to do; for this purpose, You are to direct the Lieutenant Governors of Our said Provinces and Islands, to correspond with you by every Opportunity, and to inform you of the actual state thereof. that if necessary, You may by taking upon yourself the command as aforesaid, adopt such measures, and make such regulations, consistent with Our Instructions, as will effectually promote Our service, and tend to the Interest, Welfare, and Security, of Our Subjects; Informing us thro one of Our principal Secretaries of State by the first opportunity of what you have done upon such occasions, together with every circumstance attending the same, that Our pleasure thereupon may be signified to You

3d And whereas applications have been made to Us by divers of Our Loving Subjects Inhabitants of Our Province of Quebec, that some alterations may be made in the present Constitution of Our said Province as established by the Act passed in the fourteenth Year of Our Reign Intituled an Act &c And at the same time it has been represented to Us that the most considerable Number of Our Loyal Subjects therein do not wish that any Innovation or alteration in the present Constitution should take place. It is therefore Our Will and pleasure that as soon after your arrival in our said Province as possible, you do endeavor to obtain the most full and authentick information of the real sentiments of the Inhabitants in that respect; and if from such information it shall appear to You, that it may be necessary in any instance, to depart from the present established System of Government, as settled by the aforesaid Act, You are to state the same with all possible precision, and point out what in your Opinion, the present situation of the Province, or the general wishes of our subjects may with propriety and good policy require to be done therein; and you are to communicate the same to us thro one of Our principal Secretaries of State for Our consideration

4th You are to obtain as soon as possible, an account of the actual Number of Our Subjects residing in Our said Province, distinguishing the Old from the New Inhabitants, and again distinguishing those who have retired from the Province, now the United States of America, and those who have been in Our Service during the late War, and whose Corps have been reduced; and you are also to Obtain the most authentick Information, whether any of the Nations of Indians in alliance and Friendship with Us, continue to reside within the Territories of the United States of America, and the Boundaries thereof, as settled by the Treaty of Peace; and whether those Indians, or any others within Our Territories, are supplied with goods from the subjects of the said United States, or have any commercial or other Intercourse with them; and You are to transmit the same to Us thro one of our Principal secretaries of State as before directed, together with any Information, or proposition, by which you may think, proper and

effectual Measures may be taken, to Induce those Indians to remove within Our Territories, and to discontinue any Intercourse with the subjects or Inhabitants of the said United States, which may Lessen Our Influence with them, and be prejudicial to Our Service, and the Interest and Commerce of Our Subjects.

5th And whereas it has been represented to Us, that the Internal Commerce of our province of Quebec, may be greatly promoted and extended; and propositions have been made to establish exclusive Trading Companies for that purpose: You are to transmit to Us as before directed, a clear and distinct state of the present Trade of Our said Province, both Foreign and Internal, and also Your opinion, how far the same may be extended and improved, and the representations and propositions made to Us as above mentioned, are founded in fact, and likely to be attended with Success: and whether the advantages which it is alledged may arise therefrom, will be more effectually attained by Establishing the exclusive Trading Companies as proposed, or by allowing a free and Open Trade to all Our Subjects.

6th And whereas from the great extent of Our province of Quebec, as well as the increased Number of Inhabitants, and in particular of those of our Loyal Subjects who were heretofore Inhabitants of the Provinces now the United States of America, and who have retained their allegiance to Us, it may be expedient to divide the same, and erect for the present a distinct and seperate province to the Westward: It is Our Will and Pleasure, that You do obtain the most particular information, and transmit Your Opinion, where and in what Manner the proposed division should be made, and also whether the Constitution of such new erected province, ought to be similar to what is at present, or may hereafter be established in Our province of Quebec, or whether the same should be similar to those established in Our other Provinces and Colonies in America: and also whether in Case such proposed division should take place, the Inhabitants of the province so to be erected, may not be supplied with European, and Other produce and Manufactures, with greater facility, and upon easier terms, by the Subjects and thro the Territories of the United States of America, than by Our Subjects, and thro Our province of Quebec, and thereby a connection and Intercourse between the Subjects of the Two countries, be unavoidably promoted and encouraged; which Information and Opinion, You are to transmit to Us thro one of our principal secretaries of state as before directed.

Endorsed; Dra$^{t}$ of Particular Instructions
to S$^{r}$ Guy Carleton

# INSTRUCTIONS TO LORD DORCHESTER, 1786.[1]

(Copy)
GEORGE R.
[L.S.]

C. O. (Instructions Quebec 1786-1791.)

Instructions to Our Right Trusty and Welbeloved Guy Lord Dorchester, Knight of the Most Honorable Order of the Bath—Our Captain General and Governor in Chief in and over Our Province of Quebec in America, and of all Our Territories dependent thereupon—Given at Our Court at S$^{t}$. James's the 23$^{d}$ Day of August 1786. In the Twenty Sixth Year of Our Reign.

First. . . .With these Our Instructions you will receive Our Commission under Our Great Seal of Great Britain constituting You Our Captain General and Governor in Chief in and over Our Province of Quebec in America, and all Our Territories thereunto belonging bounded and described as in Our said Commission is set forth ; In execution therefore of the Trust We have reposed in You, You are to take upon You, the Administration of the Government, and to do and execute all Things belonging to your Command according to the several Powers and Authorities of Our said Commission, and these Our Instructions to You, or according to such further Powers & Instructions, as you shall at any time hereafter receive under Our Signet & Sign Manual, or by Our Order in Our Privy Council, and you are to call together at Quebec the following Persons whom We do hereby constitute and appoint to be Our Council for the Affairs of Our said Province and the Territories thereunto belonging Viz$^{t}$ Henry Hope Esq$^{r}$ Lieutenant Gov$^{r}$ of Our said Province of Quebec, or the Lieutenant Governor of Our said Province for the time being : William Smith Esq$^{r}$ Our Chief Justice of Our said Province of Quebec or the Chief Justice of Our said Province for the Time being, Hugh Finlay, Thomas Dunn, Francis Les Vesques, Edward Harrison, John Collins, Adam Mabane, Chaussegros de Lery, George Pownall Secretary of Our said Province of Quebec, or the Secretary of Our said Province for the Time being, Picotté de Bellestres, John Fraser, Henry Caldwell, William Grant, Rocque S$^{t}$ Ours Jun$^{r}$ Francis Baby De Longueuil, Samuel Holland and George Davison Esquires, Sir John Johnson Bar$^{t}$, Charles de Lanaudiere de Boucherville & Compte du Pré Esquires, every one of which respectively shall enjoy his Office of Councillor aforesaid during Our Will and Pleasure and his residence within Our said Province of Quebec and not otherwise.

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[1] Canadian Archives, Q 26B. formerly M 230, p. 231. Just before leaving for America Sir Guy Carleton was raised to the Peerage as Baron Dorchester. He arrived in Quebec on Oct. 23rd, 1786. On comparing these Instructions with those given to Carleton in 1775 and Haldimand in 1778, it will be observed that the changes are not very numerous, beyond embodying the additional instructions issued in the interval, as in articles 2, 16, 37, and 40 to 43; or readjusting the wording to harmonize with certain ordinances passed in the meantime, as in articles 12 and 14.

2d....It is Our further Will and Pleasure that any five of the said Council shall constitute a Board of Council for transacting all Business in which their Advice and Consent may be requisite, Acts of Legislature only excepted, (in which Case you are not to act without a Majority of a whole) you are however not to select or appoint any such Members of Our said Council by Name to the Number of five as you may think fit to transact such Business, or term any select Number of such Members by the Name of a Privy Council, but you are on every Occasion where the Attendance of the Members is necessary or required, to summon all such who may be within a convenient Distance ; And It is Our further Will and Pleasure that the Members of Our said Council shall have and enjoy all the Powers, Privileges and Emoluments enjoyed by the Members of Our Councils in Our other Plantations, and also such others as are contained and directed in Our said Commission under Our Great Seal of Great Britain and in these Our Instructions to you, and that they shall meet together at such time and times, place and places as you in your Discretion shall think necessary, except when they meet for the purpose of Legislation, in which case they are to be assembled at the Town of Quebec only.

3d....And you are with all due & usual Solemnity to cause Our said Commission to be read and published at the said Meeting of Our Council, which being done, you shall then take and also administer to each of the Members of Our said Council (not being a Canadian professing the Religion of the Church of Rome) the Oaths mentioned in An Act passed in the first year of the Reign of His Majesty King George the First, Intituled "An Act "for the further Security of His Majesty's Person & Government and the "Succession of the Crown in the Heirs of the late Princess Sophia being "Protestants and for extinguishing the Hopes of the pretended Prince of "Wales and his open and secret Abettors," as altered and explained by an "Act passed in the sixth year of Our Reign Intituled, "An Act for altering "the Oath of Abjuration and Assurance, and for amending so much of an "Act of the seventh year of Her late Majesty Queen Anne, Intituled, "An Act for the Improvement of the Union of the two Kingdoms, as after "the time therein limited requires the Delivery of certain Lists and Copies "therein mentioned to Persons indicted of High Treason or Misprision of "Treason," as also make and subscribe the Declaration mentioned in An Act of Parliament made in the twenty fifth year of the Reign of King Charles the Second Intituled, "An Act for preventing Dangers "which may happen from Popish Recusants," And you and every one of them are likewise to take an Oath for the due Execution of your and their Places and Trusts with regard to your and their equal and impartial Administration of Justice, and you are also to take the Oath required by an Act passed in the seventh and eighth years of King William the Third to be taken by Governors of Plantations to do their utmost that the Laws relating to the Plantations be observed.

4th....And whereas by an Act passed in the fourteenth year of Our Reign, Intituled, "An Act for making more effectual Provision for the "Government of the Province of Quebec in North America" It is enacted and provided that no person professing the Religion of the Church of Rome, and residing in the said Province shall be obliged to take the Oath of Supremacy required by an Act passed in the first year of Queen Elizabeth, or any other Oaths substituted by any other Act in the place thereof, but that every such person, who by the said Statute is required to take the Oaths therein mentioned, shall be obliged and is thereby required under certain Penalties to take and subscribe an Oath in the form and Words therein prescribed and set down, It is therefore Our Will and Pleasure that you do administer to each and every Member of Our said Council, being a Canadian & professing the Religion of the Church of Rome, and cause each of them severally to take and subscribe the Oath mentioned in the said Act passed in the fourteenth Year of Our Reign, Intituled, "An Act for "making more effectual Provision for the Government of the Province of "Quebec in North America," and also cause them severally to take an Oath for the due Execution of their Places and Trusts and for their equal and mpartial Administration of Justice.

5....And that We may be always informed of the Names and Characters of Persons fit to supply the Vacancies which may happen in Our said Council, you are from time to time to transmit to Us by one of Our principal Secretaries of State the Names and Characters of such persons, Inhabitants of Our said Province, whom you shall esteem best qualified for that Trust, and you are also to transmit a Duplicate of the said Account to the Lords of the Committee of Our Privy Council for Trade and Plantations for their Information.

6....And if it shall at any time happen that by the Death or Departure out of Our said Province of any of Our said Councillors there shall be a Vacancy in Our said Council, Our Will and Pleasure is that you signify the same to Us by one of Our principal Secretaries of State and to the Lords of the Committee of Our Privy Council for Trade and Plantations by the first Opportunity, that We may, by Warrant under Our Signet and Sign Manual and with the Advice of Our Privy Council, constitute and appoint others in their stead.

7....You are at your first calling together Our Council to communicate to them such and so many of these Our Instructions wherein their Advice and Consent are mentioned to be requisite, or which contain any Directions as to the framing of Ordinances for the Peace, Welfare and good Government of Our said Province, as likewise all such others from time to time as you shall find convenient for Our service to be imparted to them.

8....You are to permit the Members of Our said Council to have and enjoy freedom of Debate and Vote in all Affairs of publick Concern that may be debated in Council.

9....And whereas by the aforesaid Act passed in the fourteenth year of Our Reign Intituled, "An Act for making more effectual provision for "the Government of the Province of Quebec in North America" It is further enacted and provided that the Council for the Affairs of the said Province to be constituted and appointed in manner therein directed, or the Major part thereof shall have power and Authority to make Ordinances for the peace, Welfare and good Government of the said Province with the Consent of Our Governor or in his Absence the Lieutenant Governor or Commander in Chief for the time being, Provided that no Ordinance shall be passed, unless upon some urgent Occasion at any Meeting of the Council, except between the first Day of January and the first Day of May, You are to take especial Care that the Directions of the said Act be duly observed and that no Ordinance be passed at any Meeting of the Council where less than a Majority is present, or at any time except between the first Day of January and the first Day of May as aforesaid, unless upon some urgent Occasion in which case every Member thereof resident at Quebec or within fifty Miles shall be personally summoned to attend the same.

10....That no Ordinance be passed for laying any Taxes or Duties, such Rates and Taxes only excepted as the Inhabitants of any Town or District may be authorized to assess, levy and apply within the said Town or District for the making of Roads, erecting & repairing of publick Buildings, or for any other purpose respecting the local Convenience and Œconomy of such Town or District.

That no Ordinance touching Religion or by which any Punishment may be inflicted greater than Fine or Imprisonment for three Months, be made to take Effect, until the same shall have received Our Approbation.

That in all Ordinances imposing Fines, Forfeitures or Penalties, express Mention be made that the same is granted or reserved to Us, Our Heirs and Successors for the publick Uses of the said Province, and the Support of the Government thereof, as by the said Ordinance shall be directed, and that a clause be inserted declaring that the Money arising by the Operation of the said Ordinance shall be accounted for unto Us in this Kingdom, and to Our Commissioners of Our Treasury for the time being, and audited by Our Auditor General of Our Plantations or his Deputy.

That no Ordinance be passed relative to the Trade Commerce, or Fisheries of the said Province, by which the Inhabitants thereof shall be put upon a more advantageous footing than any other of Our Subjects, either of this Kingdom or of the Plantations, who have retained their Allegiance.

That no Ordinance respecting private property be passed without a Clause suspending its Execution until Our Royal Will and Pleasure is known, nor without a Saving of the right of Us, Our Heirs & Successors and of all Bodies Politick and Corporate, and of all other persons, except such as are mentioned in the said Ordinance and those claiming by, from, and under them, And before such Ordinance is passed Proof must be made

before you in Council and entered in the Council Books, that publick Notification was made of the Parties' Intention to apply for such Ordinance in the several Parish Churches, where the Lands in question lye for three Sundays at least successively before any such Ordinances shall be proposed, And you are to transmit and annex to the said Ordinance a Certificate under your Hand that the same passed through all the forms abovementioned.

That, except in Cases of imminent Necessity or immediate temporary Expediency, you shall not enact any Ordinance for less time than two years, and you shall not re-enact any Ordinance, to which Our Assent shall have been once refused, nor give your Assent to any Ordinance for repealing any other passed in Your Government, which shall have received Our royal Approbation, unless you take care that there be a Clause inserted therein suspending the Execution thereof until Our Pleasure shall be known, and in either case it will be your Duty to make full representation to Us by One of Our principal Secretaries of State, and to the Lords of the Committee of our Privy Council for Trade & Plantations for their Information of the reasons and Necessity which appeared to you for passing such Ordinance.

That all such Ordinances be transmitted by you within six Months after their passing, or sooner if Opportunity offers, to Us by one of Our principal Secretaries of State and Duplicates thereof to the Lords of the Committee of Our Privy Council for Trade & Plantations for their Information ; That they be abstracted in the Margins and accompanied with very full and particular Observations where they may be necessary, together with fair Copies of the Journals of the proceedings of the Council, which you are to require from the Clerk of the said Council.

11....In the Consideration of what may be necessary to be provided for by Law within Our said Province, as created and established by the aforesaid Act, Intituled, "An Act for making more effectual Provision for "the Government of the Province of Quebec in North America," a great Variety of important Objects hold themselves forth to the Attention of the Legislative Council.

12..The Establishment of Courts and a proper Mode of administering Civil and Criminal Justice throughout the whole Extent of Our Province according to the Principles declared in the said Act for making more effectual provision for the Government thereof demand the greatest Care and Circumspection, for as on the one Hand it is Our gracious purpose, conformable to the Spirit and Intention of the said Act of Parliament, that Our Canadian Subjects should have the Benefit and Use of their own Laws, Usages and Customs in all Controversies respecting Titles of Land, and the Tenure, Descent, Alienation, Incumbrances and Settlements of real Estates and the Distribution of personal property of Persons dying intestate, so on the other hand it will be the Duty of the Legislative Council to consider well in framing such Ordinances, as may be necessary for the Establishment of Courts of Justice, and for the better Administration of Justice, whether

the Laws of England may not be, if not altogether, at least in part the Rule for the Decision in all Cases of personal Actions grounded upon Debts, Promises, Contracts and Agreements, whether of a Mercantile or other Nature, and also of Wrongs proper to be compensated in Damages, and more especially where Our Natural born Subjects of Great Britain, Ireland, or other Plantations residing at Quebec, or who may resort thither or have Credit or Property within the same, may happen to be either Plaintiff or Defendant in any Civil Suit of such a Nature.

13....Whereas an Ordinance hath been passed in Our Province of Quebec, Intituled, "An Ordinance for securing the Liberty of the Subject "and for the prevention of Imprisonments out of this Province," It is Our Will and Pleasure that you do take effectual Care that the said Ordinance be duly enforced, so that every Security to personal Liberty, which is thereby provided for, may be fully enjoyed by Our Subjects in that Province.

14....Whereas, in pursuance of Our former Instructions to Our Governors and Commanders in Chief, Courts of Justice have been established within Our province of Quebec, It is Our Will and Pleasure that you do take due care that in all Cases whatever the Powers and Authorities granted by Us, or by any Ordinance confirmed by Us, to the said several Courts be duly observed and enforced, and that the Proceedings therein be in all things conformable to the said Act of Parliament "for making more effectual "provision for the Government of the Province of Quebec," and to such Ordinances as may have been or hereafter may be enacted by the Legislature for those purposes ; And that the Governor and Council (of which in the Absence of the Governor and Lieutenant Governor the Chief Justice is to be President) shall continue to be a Court of Civil Jurisdiction for the hearing and determining of all Appeals from the Judgment of the other Courts, where the Matter in dispute is above the Value of ten Pounds; That any five of the said Council (if no more shall upon Summons be present) with the Governor, Lieutenant Governor or Chief Justice shall constitute a Court for that purpose, and that their Judgment shall be final in all Cases not exceeding the Value of five hundred Pounds Sterling ; In which Cases an Appeal from their Judgment is to be admitted to Us in Our Privy Council ; It is however Our Will and Pleasure that no Appeal be allowed unless Security be first duly given by the Appellant that he will effectually prosecute the same, and answer the Condemnation, as also pay such Costs and Damages as shall be awarded by Us, in case the Sentence be affirmed ; Provided nevertheless, where the Matter in Question relates to the taking or demanding of any Duty payable to Us, or to any Fee of Office, or Annual Rents or other such like Matter or Thing, where the Right in future may be bound, in all such Cases Appeal to Us in Our Privy Council is to be admitted, though the immediate Sum or Value appealed for be of less Value ; And it is Our further Will and Pleasure that in all Cases where Appeals are admitted unto Us in Our Privy Council Execution be suspended until the final Determination of such Appeal, Unless good and sufficient Security be given

by the Appellee to make ample restitution of all that the Appellant shall have lost by means of such Decree or Judgment, in case upon the Determination of such Appeal such Decree or Judgment should be reserved, and restitution awarded to the Appellant: Appeals unto Us in Our Privy Council are also to be admitted in all Cases of Fines imposed for Misdemeanours, Provided the Fines so imposed amount to or exceed the Sum of One hundred Pounds Sterling, the Appellant first giving good Security that he will effectually prosecute the same, & answer the Condemnation, if the Sentence by which such Fine was imposed in Quebec be affirmed.

15....And it is Our Will and Pleasure that you do, from time to time as the Circumstances and Condition of Affairs may require, with Our said Council in their Legislative Capacity deliberate upon and frame such Ordinances as may be expedient for continuing, amending or enforcing any Ordinances now in force, or making any further or necessary Changes and regulations in the Courts of Judicature already established, or in the Mode of administering Justice within Our said Province, provided that such Ordinances be strictly conformable to the Act of Parliament aforesaid and these Our Instructions.

16.....It is Our Will and Pleasure that all Commissions, to be granted by you to any person or persons to be Judges or Justices of the Peace or other necessary Officers, be granted during Pleasure only.

17....You shall not displace any of the Judges, Justices of the peace or other Officers or Ministers without good and sufficient Cause, which you shall signify in the fullest and most distinct Manner to Us by one of Our Principal Secretaries of State and to the Lords of the Committee of Our Privy Council for Trade & Plantations for their Information.

18....Whereas it is of the greatest Importance to Our Service and to the Welfare of Our Plantations that Justice be every where speedily and duly administered, and that all Disorders, Delays and other undue Practices in the Administration thereof be effectually prevented, We do particularly require you to take especial Care that in all Courts where you are or shall be authorized to preside Justice be impartially administered, And that in all other Courts established or to be established within Our said Province all Judges and other Persons therein concerned do likewise perform their several Duties without Delay or Partiality.

19....You are to take care that all Writs be issued in Our Name throughout the Province under your Government.

20....Whereas the Establishment of proper Regulations in Matters of Ecclesiastical Concern is an Object of very great Importance, it will be your indispensible Duty to take care that no Arrangements in regard thereto be made, but such as may give full Satisfaction to Our New Subjects in every Point, in which they have a right to any Indulgence on that Head, always remembring that it is a Toleration of the free Exercise of the Religion of the Church of Rome only, to which they are entitled but not to

the powers and Privileges of it as an established Church, that being a Preference which belongs only to the Protestant Church of England.

21....Upon these Principles therefore and to the end that Our just Supremacy in all Matters Ecclesiastical as well as Civil may have it's due Scope and Influence It is Our Will and Pleasure

First....That all Appeals to, or Correspondence with any foreign Ecclesiastical Jurisdiction, of what Nature or kind soever, be absolutely forbidden under very severe Penalties.

Secondly.....That no Episcopal or Vicarial powers be exercised within Our said Province by any person professing the Religion of the Church of Rome, but such only as are essentially and indispensibly necessary to the free Exercise of the Romish Religion, and in those Cases not without a Licence and permission from you under the Seal of Our said Province, for and during Our Will and Pleasure, and under such other Limitations and restrictions as may correspond with the Spirit and Provision of the Act of Parliament "for making more effectual Provision for the Government of "the Province of Quebec," and no Person whatever is to have Holy Orders conferred upon him or to have the Cure of Souls without a Licence for that purpose first had and obtained from you.

Thirdly....That no person professing the Religion of the Church of Rome be allowed to fill any Ecclesiastical Benefice or to have or enjoy any of the rights or Profits belonging thereto, who is not a Canadian by Birth, (such only excepted as are now in possession of any such Benefice) and who is not appointed thereto by Us or by or under Our Authority, and that all Right or Claim of Right in any other person whatever to nominate, present or appoint to any Vacant Benefice, other than such as may lay Claim to the Patronage of Benefices as a Civil Right, be absolutely abolished, no person to hold more than one Benefice, or at least not more than can reasonably be served by one and the same Incumbent.

Fourthly....That no Person whatever professing the Religion of the Church of Rome be appointed Incumbent of any Parish in which the Majority of the Inhabitants shall solicit the Appointment of a Protestant Minister ; in such case the Incumbent shall be a Protestant and entitled to all Tythes payable within such Parish ; But nevertheless the Roman Catholicks may have the Use of the Church for the free Exercise of their Religion at such times as may not interfere with the Religious Worship of the Protestants ; and in like manner the Protestant Inhabitants in every Parish where the Majority of Parishioners are Roman Catholicks shall notwithstanding have the Use of the Church for the Exercise of their Religion at such times as may not interfere with the religious Worship of the Roman Catholicks.

Fifthly....That no Incumbent professing the Religion of the Church of Rome appointed to any Parish shall be entitled to receive any Tythes for Lands or Possessions occupied by a Protestant, but such Tythes shall be received by such Persons as you shall appoint, and shall be reserved in the Hands of Our Receiver General as aforesaid for the Support of a Protestant

Clergy in Our said Province to be actually resident within the same and not otherwise, according to such Directions as you shall receive from Us in that behalf, and in like manner all growing Rents and Profits of a Vacant Benefice shall during such Vacancy be reserved for and applied to the like Uses.

Sixthly....That all Persons professing the Religion of the Church of Rome, who are already possessed of, or may hereafter be appointed to any Ecclesiastical Benefice, or who may be licensed to exercise any Power or Authority in respect thereto, do take and subscribe before you in Council, or before such Person as you shall appoint to administer the same, the Oath required to be taken and subscribed by the aforesaid Act of Parliament, passed in the fourteenth year of Our Reign, Intituled "An Act for making more "effectual Provision for the Government of the Province of Quebec in North "America."

Seventhly....That all Incumbents of Parishes shall hold their respective Benefices during good Behaviour, subject however, in case of any Conviction for criminal Offences, or upon due proof of seditious Attempts to disturb the Peace and Tranquillity of Our Government, to be deprived or suspended by you with the Advice and Consent of a Majority of Our said Council.

Eighthly...That such Ecclesiasticks as may think fit to enter into the Holy State of Matrimony shall be released from all Penalties to which they may have been subjected in such Cases by any Authority of the See of Rome.

Ninthly....That freedom of the Burial of the Dead in the Churches and Church-yards be allowed indiscriminately to every Christian Persuasion.

Tenthly....That the Royal Family be prayed for in all Churches and Places of Holy Worship in such Manner and Form, as is used in this Kingdom, and that Our Arms and Insignia be put up, not only in all such Churches and Places of Holy Worship, but also in all Courts of Justice, and that the Arms of France be taken down in every such Church or Court where they may at present remain.

Eleventhly....That the Society of Romish Priests, called the Seminaries of Quebec and Montreal, shall continue to possess & occupy their Houses of Residence and all other Houses and Lands to which they were lawfully entitled on the 13th of September 1759 ; and it shall be lawful for those Societies to fill up Vacancies and admit new Members according to the Rules of their Foundations, and to educate Youth in order to qualify them for the Service of Parochial Cures as they shall become vacant. It is nevertheless Our Will and Pleasure that not only those Seminaries, but all other Religious Communities so long as the same shall continue, be subject to Visitation by You Our Governor, or such other Person or Persons as you shall appoint for that purpose, and also subject to such Rules & Regulations as you shall, with the Advice and Consent of Our Council, think fit to establish and appoint.

SESSIONAL PAPER No. 18

Twelfthly.—It is also Our Will and Pleasure that all other religious Seminaries and Communities (that of the Jesuits only excepted) do for the present and until We can be more fully informed of the true State of them, and how far they are, or are not essential to the free Exercise of the Religion of the Church of Rome, as allowed within our said Province, remain upon their present Establishment, but you are not to allow the Admission of any New Members into any of the said Societies or Communities (the Religious Communities of Women only excepted) without Our express Orders for that purpose, That the Society of Jesuits be suppressed and dissolved and no longer continued as a Body Corporate or Politick, and all their Rights, Possessions and Property shall be vested in Us for such purposes as We may hereafter think fit to direct and appoint ; But We think fit to declare Our Royal Intention to be, that the present Members of the said Society as established at Quebec shall be allowed sufficient Stipends & Provisions during their natural Lives, that all Missionaries amongst the Indians whether established under the Authority of or appointed by the Jesuits, or by any other Ecclesiastical Authority of the Romish Church be withdrawn by Degrees, and at such times and in such manner as shall be satisfactory to the said Indians and consistent with publick Safety, and Protestant Missionaries appointed in their Places—That all Ecclesiastical Persons whatsoever of the Church of Rome be inhibited, upon pain of Deprivation, from influencing any person in the making of a Will, from inveigling Protestants to become Papists or from tampering with them in Matters of Religion, and that the Romish Priests be forbidden to inveigh in their Sermons against the Religion of the Church of England, or to marry, baptize or visit the Sick or bury any of Our Protestant Subjects, if a Protestant Minister be upon the Spot.

22....You are at all times and upon all Occasions to give every Countenance and Protection in your Power to such Protestant Ministers and Schoolmasters as are already established within Our said Province, or may hereafter be sent thither, to take care that such Stipends and Allowances, as We may think fit to appoint for them, be duly paid, That the Churches already appropriated, or which may hereafter be appropriated to the Use of divine Worship according to the Rites of the Church of England as by Law established, be well & orderly kept, and, as the Number of Protestants shall by God's Blessing increase, to lay out new Parishes in convenient Situations, & set apart and appropriate proper Districts of Land therein for the Scite of Churches & Parsonage Houses and for Glebes for the Ministers and Schoolmasters.

23....You are to take especial Care that Almighty God be devoutly & duly served in all Protestant Churches throughout Our said Province in which Divine Service is performed according to the Rites of the Church of England, That the Book of Common Prayer, as by Law established, be read each Sunday & Holiday, and the Blessed Sacrament duly administered.

24....You are not to prefer any Protestant Minister to any Ecclesiastical Benefice in the Province under your Government without a Certificate from the Right Reverend Father in God the Lord Bishop of London of his being conformable to the Doctrine and Discipline of the Church of England, and of a good Life and Conversation, and if any Person hereafter preferred to a Benefice shall appear to you to give Scandal either by his Doctrine or Manners You are to use the best Means for his removal.

25....You are to give Orders forthwith that every Protestant Minister within your Government be one of the Vestry in his respective Parish, and that no Vestry be held without him, except in case of Sickness or, after Notice of a Vestry being summoned, he omit to come.

26....And to the end that the Ecclesiastical Jurisdiction of the Lord Bishop of London may take place in Our Province under your Government as far as conveniently may be, We do think fit that you give all Countenance and Encouragement to the Exercise of the same, excepting only the collating to Benefices, granting Licences for Marriages and Probates of Wills, which We have reserved to you Our Governor and to the Commander in Chief of Our said Province for the time being.

27....And We do further direct that no Schoolmaster, who shall arrive in Our said Province from this Kingdom, be henceforward permitted to keep School without the Licence of the said Lord Bishop of London, and that no other Person now there or that shall come from other Parts shall be admitted to keep School in your Government without your Licence first obtained.

28....And You are to take especial Care that a Table of Marriages established by the Canons of the Church of England be hung up in all Places of Publick Worship according to the Rites of the Church of England.

29....And it is Our further Will and Pleasure that, in order to suppress as much as in you lies every Species of Vice & Immorality, you forthwith do cause all Laws already made against Blasphemy, Profaneness, Adultery, Fornication, Polygamy, Incest, Profanation of the Lord's Day, Swearing & Drunkenness to be vigourously put in Execution in every Part of your Government, and that you take due Care for the Punishment of these and every other Vice and Immorality by Presentment upon Oath to be made to the temporal Courts by the Church Wardens of the several Parishes at proper Times of the year to be appointed for that purpose, And for the further Discouragement of Vice and Encouragement of Virtue and good Living (that by such Examples the Infidels may be invited and persuaded to embrace the Christian Religion) you are not to admit any Person to Publick Trusts and Employments in the Province under your Government whose ill Fame and Conversation may occasion Scandal.

30....The Extension of the Limits of the Province of Quebec necessarily calls forth your Attention to a Variety of new Matter and new Objects

of Consideration : The Protection and Controul of the Various Settlements of Canadian Subjects and the Regulation of the Peltry-Trade in the Upper or interior Country on the one hand, And the Protection of the Fisheries in the Gulf of S$^{t}$ Lawrence and on the Labrador Coast on the other hand point to Regulations that require Deliberation and Dispatch.

31....You are not to allow any Settlements to be made beyond the Boundaries ascertained to the different Posts among the Indian Nations within the Limits of Our Province of Quebec in Alliance with Us, as such Settlements may tend to disgust those Savages, excite their Enmity and perhaps finally destroy the Peltry-Trade which ought to be cherished & encouraged by every Means in your Power.

32....It is Our Royal Intention that the Peltry-Trade of the interior Country should be free and open to all Our Subjects, Inhabitants of any of Our Colonies, who shall, pursuant to what was directed by Our Royal Proclamation of 1763, obtain trading Licences from the Governors of any of Our said Colonies under penalties to observe such Regulations, as shall be made by Our Legislature of Quebec for that purpose. These regulations therefore when established must be made publick throughout all Our American Possessions and they must have for their Object the giving every possible Facility to that Trade, which the Nature of it will admit, and which may be consistent with fair and just Dealing towards the Savages, with whom it is carried on ; The fixing stated Times and Places for carrying on the Trade and adjusting Modes of settling Tarifs of the Prices of Goods and Furs, and above all the restraining the sale of spirituous Liquors to the Indians will be the most probable and effectual Means of answering the Ends proposed ; These and a Variety of other Regulations incident to the Nature and purpose of the Peltry-Trade in the interior Country are fully stated in a Plan proposed by Our Commissioners for Trade and Plantations in 1764, a Copy of which will be herewith delivered to you, and which will serve as a Guide in a Variety of Cases, where it may be necessary to make Provision by Law for that important Branch of the American Commerce.

33....The Fisheries on the Coast of Labrador and the Islands adjacent thereto are Objects of the greatest Importance, not only on Account of the Commodities they produce, but also as Nurseries of Seamen, upon whom the Strength & Security of Our Kingdom depend.

34....Justice & Equity demand that the real and actual Property & Possession of the Canadian Subjects on that Coast should be preserved entire, and that they should not be molested or hindered in the Exercise of any sedentary Fisheries they may have established there.

35....Their Claims however extend to but a small District of the Coast, on the greatest part of which District a Cod-Fishery is stated to be impracticable.

36....On all such Parts of the Coast where there are no Canadian Possessions, and more especially where a Valuable Cod-Fishery may be carried on, it will be your Duty to make the Interest of Our British Subjects

going out to fish there in Ships fitted out from Great Britain the first Object of your Care, and as far as Circumstances will admit to establish on that Coast the Regulations in favour of British fishing Ships, which have been so wisely adopted by the Act of Parliament passed in the Reign of King William the Third for the Encouragement of the Newfoundland Fishery And you are on no account to allow any Possession to be taken, or Sedentary Fisheries to be established upon any parts of the Coast that are not already private Property by any Persons whatever, except only such as shall produce annually a Certificate of their having fitted out from some Port in Great Britain.

37. . . . Whereas it will be for the general Benefit of Our Subjects carrying on the Fishery in the Bay of Chaleur in Our Province of Quebec that such Part of the Beach & Shore of the said Bay as is ungranted should be reserved to Us, Our Heirs & Successors, It is therefore Our Will and Pleasure that you do not in future direct any Survey to be made or Grant to be passed for any Part of the ungranted Beach or Shore of the said Bay of Chaleur, except such Parts thereof as by Our Orders in Council dated the 29th of June and 21st of July last are directed to be granted to John Shoolbred of London, Merchant, and to Messrs. Robin Pipon and Co of the Island of Jersey, Merchants, but that the same be reserved to Us, Our Heirs and Successors together with a sufficient Quantity of Wood-Land adjoining thereto necessary for the purpose of carrying on the Fishery ; The Limits of such Wood-Land so to be reserved, to be determined upon and ascertained by you and Our Council for Our said Province of Quebec in such manner as from the most authentick Information shall appear to you & them most convenient and proper for that purpose ; It is nevertheless Our Intention and We do hereby signify to you Our Will and Pleasure that the free Use of such Beach or Shore and of the Wood-Land so to be reserved shall be allowed by you or any Person authorized by you to such of Our Subjects as shall resort thither for the Purpose of carrying on the Fishery in such proportions as the Number of Shallops, he or they shall respectively employ, may require ; provided that, if any Fisherman who shall have permission to occupy any Part of the said Beach or Shore and Wood-Land for the purpose of the said Fishery shall not during any one Season continue so to occupy & employ any Part of the said Beach or Shore and Wood-Land so allotted to him, You or any Person authorized by you as above may & shall allow the Use of such Part to any other Fisherman who shall apply for the same for the purpose of carrying on the Fishery. And Whereas it may be necessary to establish local Regulations to prevent Abuses as well as Disputes and Misunderstanding between the Fishermen resorting to the said Beach or Shore ; It is Our Will and Pleasure that you, by and with the Advice and Consent of Our said Council, do frame such Regulations from time to time as to you shall appear necessary to answer those salutary Purposes and that you transmit the same to Us thro' One of Our principal Secretaries of State for Our Pleasure therein by the first Opportunity.

38....We have mentioned to you the Fisheries upon the Coast of Labrador as the Main Object of your Attention, but the Commerce carried on with the Savages of that Coast and the State and Condition of those Savages deserve some regard : The Society of Unitas Fratrum urged by a laudable Zeal for promoting Christianity have already under Our protection and with Our permission formed Establishments in the Northern Parts of that Coast for the purpose of civilizing the Nations and converting them to the Christian Religion. Their Success had been answerable to their Zeal, and It is Our express Will and Pleasure that you do give them every Countenance & Encouragement in your power, and that you do not allow any Establishment to be made but with their Consent within the Limits of their Possessions.

39....By Our Commission to you under Our Great Seal of Great Britain you are authorized & impowered with the Advice and Consent of Our Council to settle & agree with the Inhabitants of Our said Province of Quebec for such Lands, Tenements and Hereditaments as now are or shall hereafter be in Our Power to dispose of, It is therefore Our Will and Pleasure that all Lands, which now are or hereafter may be subject to Our Disposal, be granted in Fief or Seigneurie, in like manner as was practised antecedent to the Conquest of the said Province, omitting however in any Grant that shall be passed of such Lands the reservation of any judicial Powers or Privileges whatever ; And It is Our further Will and Pleasure that all Grants in Fief or Seigneurie, so to be passed by you as aforesaid, be made subject to Our Royal ratification or Disallowance and a due Registry thereof within a limited time, in like manner as was practised in regard to Grants and Concessions held in Fief or Seigneurie under the French Government.

40....Whereas many of Our Loyal Subjects, Inhabitants of the Colonies and Provinces now the United States of America, are desirous of retaining their Allegiance to Us and of living in Our Dominions, and for this purpose are disposed to take up and improve Lands in Our Province of Quebec, And We being desirous to encourage Our said Loyal Subjects in such their Intentions and to testify Our Approbation of their Loyalty to Us and Obedience to Our Government by allotting Lands for them in Our said Province, And Whereas We are also desirous of testifying Our Approbation of the Bravery and Loyalty of our Forces serving in Our said Province, and who may have been reduced there, by allowing a certain Quantity of Land to such of the Non-Commissioned Officers and Private Men of our said Forces who are inclined to become Settlers therein, It is Our Will and Pleasure that immediately after you shall receive these Our Instructions you do direct Our Surveyor-General of Lands for Our said Province of Quebec to admeasure and lay out such a Quantity of Land as you, with the Advice of Our Council, shall deem necessary and convenient for the settlement of Our said Loyal Subjects, and the Non-Commissioned Officers and Private Men of Our Forces which may have been reduced in Our said pro-

vince, who shall be desirous of becoming Settlers therein ; Such Lands to be divided into distinct Seigneuries or Fiefs to extend from two to four Leagues in front and from three to five Leagues in Depth if situated upon a Navigable River, otherwise to be run square or in such shape and in such Quantities as shall be convenient and practicable, and in each Seigneurie a Glebe to be reserved & laid out in the most convenient Spot, to contain not less than 300, nor more than 500 Acres ; The Property of which Seigneuries or Fiefs shall be and remain vested in Us, Our Heirs & Successors, And you shall allot such Parts of the same as shall be applied for by any of Our said Loyal Subjects, Non-Commissioned Officers and Private Men of Our Forces reduced as aforesaid, in the following Proportions, that is to say,

To every Master of a Family One Hundred Acres and fifty Acres for each Person of which his Family shall consist ;

To every single Man fifty Acres ;

To every Non-Commissioned Officer of Our Forces reduced in Quebec Two Hundred Acres ;

To every private Man reduced as aforesaid One Hundred Acres,

And for every Person in their Families fifty Acres.

The said Lands to be held under Us, Our Heirs and Successors, Seigneurs of the Seigneurie or Fief in which the same shall be situated, upon the same Terms, Acknowledgements & Services as Lands are held in Our said Province under the respective Seigneurs holding and possessing Seigneuries or Fiefs therein, and reserving to Us, Our Heirs and Successors from and after the expiration of Ten Years from the admission of the respective Tenants a Quit Rent of one half penny per Acre.

41....And whereas upon the raising and establishing the Corps late the 84th Regiment of Foot, We did promise and declare that the Officers and Privates of the said Corps should when reduced be intitled to and receive Grants for certain allotments of Lands in proportion to their respective Ranks therein, It is Our Will and Pleasure that you do in manner as herein before directed Grant Warrants of Allotment and Survey to such of the Officers and privates of the said late Eighty fourth Regiment of Foot now reduced, who shall be willing to settle and become Inhabitants of Our said Province of Quebec, and shall apply for the same for such Quantities of Land as they shall be respectively intitled to, In consequence of our said promise and declaration contained in Our Instructions to Our Governors of New York and North Carolina dated the 3d April 1775 that is to say,

| | |
|---|---|
| To Field Officers | 5000 Acres |
| Captains | 3000 |
| Subalterns | 2000 |
| Non Commission Officer | 200 |
| Privates | 50 |

and that the Surveys be made and Grants for the same delivered free of Expence as herein before directed, Provided nevertheless that every Commissioned and Non Commissioned Officer or private belonging to the said

late 84th Regiment of Foot, who shall claim and apply for Land in Our Province of Quebec as aforesaid, shall declare upon Oath, that no Land has been obtained by him in any of our other Provinces in America under Our Royal declaration as aforesaid.

42....It is Our further Will and Pleasure, that every Person within the meaning of these Our Instructions upon making application for Land shall take the Oaths directed by Law before you or Our Commander in Chief for the time being, or some person by you or him authorized for that purpose and shall also at the same time make and subscribe the following Declaration (Vizt.) "I, A B, do promise and declare that I will maintain "and defend to the utmost of my power the authority of the King in His "Parliament, as the supreme Legislature of this Province," which Oaths and declaration shall also be taken, made, and subscribed by every Future Tenant before his, her, or their admission upon Alienation, Descent, Marriage or otherwise howsoever, and upon refusal the Lands to become revested in us Our Heirs and Successors And it is Our further Will and Pleasure that the expence of laying out and surveying as well the Seigneuries or Fiefs aforesaid, as the several Allotments within the same and of the Deed of admission shall be paid by the Receiver General of Our Revenue in the said Province of Quebec ; out of such Monies as shall be in his hands, upon a Certificate from you or Our Commander in Chief for the time being in Council, Oath being made by Our Surveyor General to the Account of such Expence ; Provided however that only one half of the usual and accustomed Fees of Office shall be allowed to Our said Surveyor General or any other of Our Officers in the said Province entitled thereunto upon any Survey or Allotment made, or upon admission into any Lands by Virtue of these Our Instructions.

43....And whereas we have some time since purchased the Seigneurie of Sorel from the then Proprietors, the Lands of which are particularly well adapted for improvement and cultivation ; and the local situation of the said Seigneurie makes it expedient that the same should be settled by as considerable a number of Inhabitants of approved Loyalty as can be accommodated therein, with all possible dispatch—It is therefore Our will and Pleasure, that you do cause all such Lands within the same as are undisposed of, to be run into small Allotments, and that you do allot the same to such of the Non-Commissioned Officers and private Men of Our Forces who may have been reduced in Our said Province, or to such other of Our Loyal Subjects as may be inclined to settle and improve the same, in such Proportions as you may judge most conducive to their Interest and the more speedy Settlement of Our said Seigneurie. The Lands so allotted to be held of Us, Our Heirs, and Successors, Seigneurs of Sorel upon the same Conditions and under the same reserved Rent at the Expiration of ten years, as the other Tenants of Seigneuries now hold their Lands and pay to Us, and also of taking the Oaths and making and subscribing the Declaration as herein before is mentioned and directed ; The Expence of making the

said Allotments and of Admission thereunto be also paid and defrayed in like manner as those in the Seigneuries directed to be laid out by these Our Instructions. It is nevertheless Our Will and Pleasure that the Allotments to be made of such of Our Loyal Subjects from the Provinces or Colonies now the United States of America, as may be disposed to settle and improve Lands in Our said Province of Quebec, shall be limited to those only who may have withdrawn themselves from the said Provinces or Colonies after the signing of the definitive Treaty of Peace with the said United States, & no other.

And it is Our Will and Pleasure that a Record be kept in the Office of the Receiver General of Our Revenue of every Admission into Lands as well by Virtue of these Our Instructions with respect to Our Loving Subjects retiring from the Provinces & Colonies, now the United States of America, and to Our Forces disbanded as aforesaid, as in Cases of future Admission by Alienation or otherwise, A Docquet of which shall be transmitted yearly to Us, thro' one of our principal Secretaries of State, & also a Duplicate thereof to Our High Treasurer or the Commissioners of Our Treasury for the time being.

44....It is Our Will and Pleasure however that no Grants or Allotments be made of any Lands, on which there is any considerable Growth of White Pines fit for Masting Our Royal Navy, and which lie convenient for Water Carriage, but that you do cause all such Lands to be set apart for Our Use and proper Regulations to be made and Penalties inflicted to prevent Trespasses on such Tracts and the cutting down or destroying of the Trees growing thereon.

45....And Whereas it appears, from the Representations of Our late Governor of the District of Trois Rivières, that the Iron Works at S$^{t}$ Maurice in that District are of great Consequence to Our Service, It is therefore Our Will and Pleasure that no part of the Lands upon which the said Iron Works were carried on, or from which the Ore used in such Works was procured, or which shall appear to be necessary & convenient for that Establishment either in respect to a free Passage to the River S$^{t}$ Lawrence or for producing a necessary Supply of Wood, Corn and Hay, or for Pasture for Cattle, be granted to any private person whatever; And also that as large a District of Land as conveniently may be, adjacent to & lying round the said Iron Works, over & above what may be necessary for the above purposes, be reserved for Our Use to be disposed of in such manner as We shall hereafter direct and appoint.

46....And it is Our further Will and Pleasure that you do consider of a proper and effectual Method of collecting, receiving and accounting for Our Quit Rents, whereby all Frauds, Concealments, Irregularity or Neglect therein may be prevented, and whereby the Receipt may be effectually checked and controlled—And if it shall appear necessary to pass an Ordinance for the more effectually ascertaining, and the more speedily and regularly collecting Our Quit Rents, you are to prepare the Heads of such

a Bill as you shall think may most effectually conduce to the procuring of the good Ends proposed, and to transmit the same to Us by One of Our Principal Secretaries of State for Our further Directions therein, and you are also to transmit a Duplicate thereof to the Lords of the Committee of Our Privy Council for Trade and Plantations for their Information.

47....You are to use your best Endeavours in improving the Trade of the Province under your Government by settling such Orders & Regulations therein, with the Advice of Our said Council, as may be most acceptable to the Generality of the Inhabitants ; And it is Our express Will and Pleasure that you do not on any pretence whatever, upon pain of Our highest Displeasure, give your Assent to any Law or Laws for setting up any Manufactures and carrying on any Trades which are hurtful & prejudicial to this Kingdom, and that you do use your utmost Endeavours to discourage discountenance & restrain any Attempts which may be made to set up such Manufactures or establish any such Trades.

48....And it is Our Will and Pleasure that you do not dispose of any Forfeitures or Escheats to any Person until the Sheriff or other proper Officer has made Enquiry by a Jury upon their Oaths into the true Value thereof, nor until you have transmitted to Our Commissioners of Our Treasury a particular Account of such Forfeitures & Escheats and the Value thereof ; And you are to take care that the produce of such forfeitures and Escheats, in case We shall think proper to give you Directions to dispose of the same, be duly paid to Our Treasurer or Receiver General of Our said Province, and a full Account transmitted to Our Commissioners of Our Treasury or Our High Treasurer for the time being, with the Names of the persons to whom disposed of.

49....And Whereas Commissions have been granted unto several Persons in Our respective Plantations in America for the trying of Pirates in those parts pursuant to the Acts for the more effectual Suppression of Piracy and by a Commission already sent to Our Governor there is impowered, together with others therein mentioned, to proceed accordingly in reference to Our Will and Pleasure is that you do use your best Endeavours to apprehend all Persons whatever, who may have been guilty of Piracy within your Government, or who having committed such Crimes at other Places may come within your Jurisdiction, and until We shall think proper to direct the like Commission to be established for Our Government of Quebec, you are to send such Pirates with what Proofs of their Guilt you can procure or collect to Our Governor of to be tried and punished under the Authority of the Commission established for those Parts.

50....And whereas you will receive from Our Commissioners for executing the Office of High Admiral of Great Britain & of Our Plantations a Commission constituting you Vice Admiral of Our said Province, you are hereby required and directed carefully to put in execution the several Powers thereby granted you.

51....Whereas great Inconveniences have happened heretofore by Merchant-Ships and other Vessels in the Plantations wearing the Colours borne by Our Ships of War under pretence of Commissions granted to them by the Governors of the said Plantations, And by trading under those Colours, not only among Our own Subjects, but also those of other Princes and States, and committing divers Irregularities, they may very much dishonour Our Service ; For the preventing thereof you are to oblige the Commanders of all such Ships, to which you shall grant Commissions, to wear no other Colours than such as are described in an Order in Council of the 7th Janv. 1730 in relation to Colours to be worn by all Ships & Vessels, except Our Ships of War.

52....And whereas there have been great Irregularities in the Manner of granting Commissions in the Plantations to private Ships of War, you are to govern yourself, whenever there shall be Occasion, according to the Commissions & Instructions granted in this Kingdom, but you are not to grant commissions of Marque or Reprisal against any Prince or State or their Subjects in Amity with Us to any Person whatever without Our special Command.

53....Whereas We have been informed that during the time of War Our Enemies have frequently got Intelligence of the State of Our Plantations by Letters from private Persons to their Correspondents in Great Britain taken on board Ships coming from the Plantations, which has been of dangerous Consequence, Our Will and Pleasure therefore is that you signify to all Merchants, Planters and others, that they be very cautious in time of War, whenever that shall happen, in giving any Accounts by Letters of the Publick State and Condition of the Province under your Government ; And you are forthwith to give Directions to all Masters of Ships or other persons to whom you may intrust your Letters that they put such Letters into a Bag with a sufficient Weight to sink the same immediately, in case of imminent Danger from the Enemy ; And you are also to let the Merchants and Planters know how greatly it is for their Interest, that their Letters should not fall into the Hands of the Enemy, and therefore that they should give the like Orders to Masters of Ships in relation to their Letters ; And you are further to advise all Masters of Ships that they do sink all Letters, in case of Danger in the manner before mentioned.

54....And whereas the Merchants and Planters in Our Plantations in America have in time of War corresponded & traded with Our Enemies and carried Intelligence to them to the great Prejudice & Hazard of Our said Plantations, you are therefore by all possible Methods to endeavour to hinder such Trade & Correspondence in Time of War.

55..Whereas it is absolutely necessary that We be exactly informed of the State of Defence of all Our Plantations in America, as well in relation to the Stores of War that are in each Plantation, as to the Forts & Fortifications there, and what more may be necessary to be built for the Defence and Security of the same, you are as soon as possible to prepare an Account

thereof with relation to Our said Province in the most particular manner, And you are therein to express the present State of the Arms Ammunition & other Stores of War belonging to the said Province either in publick Magazines or in the Hands of private Persons ; together with the State of all places either already fortified, or that you judge necessary to be fortified for the Security of our said Province, And you are to transmit the said Accounts to Us by One of Our principal Secretaries of State, and also Duplicates thereof to the Lords of the Committee of Our Privy Council for Trade and Plantations for their Information, and also a Duplicate thereof to Our Master General or Principal Officers of Our Ordinance ; which Accounts are to express the Particulars of Ordinance, Carriages, Balls, Powder and all other Sorts of Arms & Ammunition in Our publick Stores, and so from time to time of what shall be sent to you or bought with the publick Money and to specify the time of the Disposal and the Occasion thereof ; And you are half yearly to transmit a general Account of the State of the Fortifications & Warlike Stores specified in the manner abovementioned.

56....And in case of any Distress of any other of Our Plantations, You shall, upon Application of the respective Governors thereof unto you, assist them with what Aid the Condition & Safety of Our Province under your Government can spare.

57....If any thing shall happen which may be of Advantage or Security to Our Province under your Government, & which is not herein or by your Commission provided for, We do hereby allow unto you, with the Advice and Consent of Our Council, to take Order for the present therein, giving unto Us by one of Our Principal Secretaries of State speedy Notice thereof, that you may receive Our Ratification, if We shall approve the same ; Provided always that you do not, by Colour of any Power or Authority hereby given you, commence or declare War without Our Knowledge and particular Commands therein, and you are also to transmit a Duplicate of such Notice as aforesaid to the Lords of the Committee of Our Privy Council for Trade and Plantations for their Information.

58....And whereas We have by the first Article of these Our Instructions to you directed and appointed that your chief Residence shall be at Quebec, you are nevertheless frequently to visit the other parts of your Government in order to inspect the Management of all publick Affairs, and thereby the better to take care that the Government be so administered that no disorderly practice may grow up contrary to Our Service and the Welfare of Our Subjects.

59....And whereas great Prejudice may happen to Our Service & the Security of the Province by your Absence from those Parts, You are not upon any Pretence whatever to come into Europe without having first obtained Leave for so doing from Us under Our Sign Manual & Signet, or by Our Order in Our Privy Council, Yet nevertheless in Case of Sickness you may go to any of Our Islands in the West Indies including therein the

Bermuda and Bahama Islands, and there stay such a space of time, as the recovery of your Health may absolutely require.

60....And whereas We have thought fit by Our Commission to direct that, in case of your Death or Absence from Our said Province, and in case there be at that time no Person within Our said Province commissionated or appointed by Us to be Our Lieutenant Governor or Commander in Chief, the eldest Councillor, being a natural born Subject of Great Britain, Ireland or the Plantations and professing the Protestant Religion, who shall be at the time of your Death or Absence residing within Our said Province under your Government, shall take upon him the Administration of Government and execute Our said Commission and Instructions and the several Powers and Authorities therein directed ; It is nevertheless Our express Will and Pleasure that in such case the said President shall forbear to pass any Act or Acts, but what are immediately necessary for the Peace and Welfare of the said Province, without Our particular Order for that purpose.

61....And whereas We are desirous that a proper Provision should be made for the Support of Our Government within Our said Province of Quebec, We do therefore hereby declare it to be Our Royal Intention, that the following Annual Salaries & Allowances be discharged & paid out of any Revenues arising to Us within the same, or out of such Monies as shall be granted or appropriated to the Uses and Services of Our said Province of Quebec, that is to say,[1]

| | | | |
|---|---|---|---|
| To the Governor p[r] Annum | £2000 | " | " |
| Lieut Governor | 1500 | " | " |
| To the Chief Justice | 1200 | " | " |
| To 6 Judges of Common Pleas £500 each | 3000 | " | " |
| To the Judge of the Admiralty | 200 | " | " |
| To the Attorney General | 300 | " | " |
| To the Clerk of the Crown & Pleas | 100 | " | " |
| To two Sheriffs at £100 each | 200 | " | " |
| To the Secretary & Register | 400 | " | " |
| To the Clerk of the Council | 100 | " | " |
| To the Surveyor of Lands | 300 | " | " |
| To the Surveyor of Woods | 200 | " | " |
| To the Commissary for Indians | 300 | " | " |
| To the Captain of the Port | 100 | " | " |
| To the Naval Officer | 100 | " | " |
| To the Receiver General of the Revenues | 400 | " | " |
| To twenty three Councillors at £100 each | | | |
| To the Lieutenant Governors or Superintendants at Detroit | 500 | " | " |
| To one Judge of the Inferior Courts of King's Bench and Common Pleas at each of the above Posts, at £100 each Judge | | | |
| To an Assistant or Assessor at each Post, at £50 p[r] Ann: | | | |
| To a Sheriff for each District at £20 p[r] Annum | | | |

[1] On comparing this list with the one given in the Instructions of 1775, (see p. 432), it will be found that several changes have been made, but without much alteration in the salaries. In the case of the Lt. Governors or Superintendents of the western Posts, though the Posts mentioned in the Instructions of 1775 were nearly all within the territory ceded to the United States by the treaty of 1783, yet as they had not been given up, these positions were still to be filled. The names of the Posts, with the Exception of Detroit, are left blank.

SESSIONAL PAPER No. 18

| | | | |
|---|---|---|---|
| To a Grand Voyer | £200 | " | " |
| To a French Secretary | 200 | " | " |
| To 4 Ministers of the Protestant Church at £200 p$^{r}$ Ann: each | 800 | " | " |
| To 2 Ministers of the Church of England settled at Sorel and Cataraqui £100 each | 200 | " | " |
| To 2 Schoolmasters at £100 each | 200 | " | " |
| To an Allowance to the Persons licensed to superintend the Romish Church | 200 | " | " |
| To Pensions to the Officers of a Corps of Canadians employed in the last War and discharged without any Allowance, as follows, Viz$^{t}$: | | | |
| To Mons$^{r}$ Rigauville the Commandant of said Corps | 200 | " | " |
| To 5 Captains at £100 each | 500 | " | " |
| To 10 Lieutenants at £50 each | 500 | " | " |
| To the Commandant of the Savages | 100 | " | " |
| To Annual Contingent Expences | 1000 | " | " |
| | £ | | |

62....And whereas We have made sufficient Provision for the Support of Our Lieutenant Governor of Our said Province of Quebec for the time being by the Allowance inserted in the foregoing Estimate, It is Our Will and Pleasure, when it shall happen that you shall be absent from Our said Province, that no Part of the Salary or any Perquisites and Emoluments, which are due unto you, shall during the Time of your Absence be claimed by, or paid and satisfied to such Lieutenant Governor : And it is Our further Will and Pleasure that if Our Lieutenant Governor of the said Province of Quebec should happen to die during such your Absence, and the Administration of the Government thereby devolve on the President or Eldest Member of Our Council, such President or Councillor shall, during his continuing in the Chief Command, receive the Salary or Allowance hereby provided for Our Lieutenant Governor, and no other allowance, Perquisite, or Emolument whatever.

G. R.

ENDORSED : 1786 Quebec
Draught of General Instructions.
[L.S.]
GEORGE R.

C.O. (Quebec 1768-1787, Vol. 1.)

Additional Instruction[1] to Our Right Trusty & Welbeloved Guy Lord Dorchester Knight of the most Honorable Order of the Bath, Our Captain General and Governor in Chief in and over Our Province of Quebec &$^{ca}$. &$^{ca}$. in America or to the Lieutenant Governor or Commander in Chief of Our said Province for the Time being. Given at Our Court at S$^{t}$ James's the Twenty first Day of March 1787. In the Twenty Seventh Year of Our Reign.

Whereas We did by Our General Instructions to you bearing Date at S$^{t}$ James's the Twenty third Day of August 1786 declare Our Royal Will and Pleasure that sundry Salaries and Allowances therein mentioned should be discharged and paid out of any Revenues arising to Us within Our said Province of Quebec or out of such Monies as should be granted or appropri-

[1] Canadian Archives, Q. 26B formerly M 230, p. 280.

ated to the Uses and Services of Our said Province ; And whereas We thought fit, by Our Warrant under Our Signet and Sign Manual bearing date the Sixteenth day of March 1781, to authorize and require Our Trusty and Welbeloved Frederick Haldimand Esq$^{r}$ (now Sir Frederick Haldimand Knight of the most Honorable Order of the Bath) at that Time Our Captain General and Governor in Chief in and over Our Province of Quebec, to cause Letters Patent to be passed under the Seal of Our said Province, constituting and appointing Our Trusty and Welbeloved William Pollock Esq$^{r}$ Clerk of the Crown of & in Our said Province in the Room of William Gordon Esq$^{r}$ deceased—And whereas the said William Gordon did over and above the Salary of One Hundred Pounds p Annum, as directed by the 56$^{th}$ Article of Our Instructions to Our aforesaid Captain General and Governor in Chief to be paid to the Clerk of the Crown, receive and enjoy the further Sum of Two Hundred Pounds per Annum, and which said additional Allowance the said William Pollock hath also received from the Date of his Appointment to the said Office of Clerk of the Crown of Our said Province of Quebec, untill the last usual half yearly Period of Payment, Viz$^{t}$. the first day of November last.—And Whereas it is Our Intention that the said additional Allowance should be continued unto him for certain good Causes and Considerations. It is Our Will and Pleasure and We do hereby direct and appoint that the said Salary and Allowance of two hundred Pounds per Annum, in Addition to the One Hundred Pounds p Annum, which we have directed to be paid to him as Clerk of the Crown by the Sixty first Article of Our General Instructions to you, should be paid to him untill such Time as Our further Royal Will and Pleasure shall be signified to you.

G. R.

GEORGE R.
[L.S.]

C.O. (Instructions Quebec 1786-1791.)

Instructions[1] to Our Right Trusty and Welbeloved Guy Lord Dorchester, Knight of the most Honorable Order of the Bath, Our Captain General and Governor in Chief in and over Our Province of Quebec in America, and of all Our Territories dependent thereupon. Given at Our Court of Saint James's the 25$^{th}$ day of August 1787 in the twenty seventh Year of Our Reign.

Whereas We have thought proper by Our Commission under the Great Seal of Great Britain to appoint the Right Reverend Father in God Charles Inglis Doctor in Divinity, to be Bishop of the Province of Nova Scotia, and have thereby given to him, and his Successors in the said See, Jurisdiction Spiritual, and Ecclesiastical, in and throughout the said Province of Nova Scotia and it's Dependencies, according to the Laws and Canons

[1] Canadian Archives, Q. 26B formerly M 230, p. 282.

of the Church of England which are lawfully made and received in England, in the several causes and matters particularly expressed and set forth in the said Commission, and no other: And Whereas by another Commission under the Great Seal of Great Britain, we have also thought proper to give and grant to the said Bishop of Nova Scotia, full Power and Authority, by himself or his sufficient Commissary or Commissaries, to Exercise the like Spiritual and Ecclesiastical Jurisdiction, within the Provinces of Quebec, of New Brunswick, and the Island of Newfoundland as is set forth in the said Commission. We do think fit hereby to Order and enjoin you, that you do give all fit support and Countenance to the said Bishop, in the exercise of his Jurisdiction Spiritual and Ecclesiastical, according to the Laws of this Realm, and the Laws of the Provinces under your Government, and to the Tenor of the said Commissions Copies whereof are hereunto annexed : and it is Our further Will and Pleasure that you do cause the said Commissions to be forthwith Registered in the Publick Records of the said Provinces : It is nevertheless Our Will and Pleasure to reserve to you, the granting of Licenses for Marriages, Letters of Administration, and Probates of Wills, as heretofore exercised by you and your Predecessors; and also to reserve to you and to all others, to whom it may lawfully belong, the Patronage and Right of Presentation to Benefices ; but it is Our Will and Pleasure that the Person so presented shall be instituted by the Bishop or his Commissary duly authorized by him, as directed by Our said Commissions.

You are to permit Liberty of Conscience and the free Exercise of all such Modes of Religious Worship, as are not prohibited by Law, to all Persons who inhabit and frequent the Provinces under your Government, provided they be contented with a quiet and peaceable enjoyment of the same, without giving Offence or Scandal to Government.

You are to take especial Care that God Almighty be devoutly and duly served throughout your Government ; that the Lord's Day be duly kept, and that the Services and Prayers appointed by, and according to the Book of Common Prayer, be publickly and solemnly read and performed throughout the Year.

You are to be careful that the Churches which are or may be hereafter erected in Our said Provinces or Islands under your Government, be well and orderly kept, and that besides a competent Maintenance to be assigned to the Minister of each Parish Church, a Convenient House be built at the Common Charge for each Minister.

You shall recommend to the Legislative Council and General Assemblies, of the Provinces under your Government, to settle the Limits of Parishes, in such a manner as shall be deemed most convenient for accomplishing this good Work.

You are to use your best Endeavours that every Minister be constituted one of the Vestry in his Respective Parish, and that no Vestry be held

without him, except in Case of Sickness, or that after Notice given of a Vestry he omit to come.

It is Our Will and Pleasure that you recommend to the Legislative Council or Assemblies, within your Government, to make due Provision for the erecting and Maintaining of Schools, where Youth may be educated in Competent Learning, and in Knowledge of the Principles of the Christian Religion.

And it is Our further Will and Pleasure that no Person shall be allowed to keep a School in the Provinces under your Government, without your License first had and obtained : In granting which you are to pay the most particular attention, to the Morals and proper Qualifications of the Persons applying for the same, and in all Cases where the School has been founded, instituted or appointed for the Education of Members of the Church of England, or where it is intended, that the Schoolmaster should be a Member of the Church of England ; you are not to grant such Licenses except to Persons, who shall first have obtained from the Bishop of Nova Scotia, or one of his Commissaries, a Certificate of their being properly qualified for that Purpose.

And it is Our further Will and Pleasure that in Order to suppress every Species of Vice, Profaneness and Immorality, you do forthwith cause all Laws already made against Blasphemy, Profaneness, Adultery, Fornication, Polygamy, Incest, Profanation of the Lord's day, Swearing and Drunkenness, to be strictly put in Execution in every Part of the Provinces under Your Government and that for this purpose you do direct that the Constables and Church Wardens of the several Parishes do make presentment upon Oath, of any of the Vices before mentioned, to the Justices of the Peace in their Session, or to any of the other Temporal Courts : And you are earnestly to recommend to the Legislative Council or Assemblies of the Provinces under your Government, to provide effectual Laws for the Restraint and Punishment of all such of the aforementioned Vices, against which no laws are as yet provided, or in Cases where the Laws already made, are found to be insufficient And in order to discountenance Vice and promote the practice of Virtue to the utmost of your Power, we do hereby strictly command and enjoin you, to appoint no Person to be a Justice of the Peace, or to any Publick Trust or Employment, whose notorious ill Life or Conversation may occasion Scandal.

G R—

ENDORSED : Instructions For Lord Dorchester Governor of Quebec Dated 25th August 1787.

SESSIONAL PAPER No. 18

## CHIEF JUSTICE SMITH TO NEPEAN.[1]

QUEBEC 2d Jany 1787.

Dear Sir,

I avail myself of the Return of an Express from New Brunswick, for a Line that may arrive from St. John's or Hallifax, before the February mail from New York ; wishing you to be authentically informed, and the Government thro' you, as soon as possible, of an Event of no small consequence to the public Welfare.

The first cause I found in the Court of Appeals, raised the important Question, whether a subject of Controversy, in which the Parties were English, as well as all that are interested under them, and no Canadian concerned in the remotest Degree, called for a Decision by the English or French Law? We reversed the Judgment of the Common Pleas, which had in the most express Terms, held the Doctrine, that the Quebec Act brought every Dispute of Property without any exception, to the Test of the old Laws of the Colony prior to the Conquest.

The opinion of the Common Pleas, had alarmed or disgusted all the English Inhabitants, And Appearing to me to be inauspicious to the Commerce, Population and strength of the Colony, and as ill founded as it was Dangerous, I did not meerly consent to the Reversal, but took up some time in shewing, that in a case in which to do Justice, Resort must be had to the French Code, *that Law* gave the Rule, and that the Action and the Proceedings in it, ought to be in strict conformity to the Quebec Act and the Provincial Ordinances ; and where these were silent, to the French forms of Practice, as far as the Modes materially influenced the object and end of the Suit. And on the other hand, that where the Cause was as purely English as the other was French, and Justice required a Reference to the English Law, *this Law* was the Test ; and that if the same Statute and the Ordinances, did not authorize or justify a Deviation, the Practice of the Courts in England, directed the *main* Progress and conduct of the Suit.

Upon the Ground of these Discriminations, I saw Safety, both to the Canadian and the British ; and to both Ruin, by an exclusive adoption of either System, for by the daily Interchange of Property, and especially in the fifteen years antecedent to the Quebec Act, the Inhabitants became Fountains of Title to each other—And as to the manner of conducting the Suit, it seemed fit that as the shadow, tho' he is a bad Lawyer that Supposes it to be no more, it should follow the substance, the French Practice, if the cause was that the Quebec Act makes a Canadian Cause, and the English, where it was not by that Act made a French one.

To clear these Points, I reasoned upon the origin of the Statute, and its Recognition of *two* classes of Subjects, and upon the Fabric of Government

[1] Canadian Archives, Q 27—1, p. 18. Wm. Smith, formerly Chief Justice in the Province of New York, came out with Lord Dorchester as the new Chief Justice of Quebec Province. He exercised an important influence in bringing about a change in the form of government.

erected by the Executive under it. I gave some scope to the Argument ab inconvenienti, in stating the consequences of the contrary opinion, as injurious to the National Sovereignty, and the general commerce, and tending not only to shake the Foundations of every man's estate, but by preventing British Accessions to the Country, and driving out of it the Thousands of Loyalists that have already taken refuge here, it would be reduced to a state of Debility, exposing it to the first Power, that might think it worth the trouble of an Invasion.

The Doctrine of the Common Pleas, I find is as *novel* as it is mischievous. It had been never before solemnly avowed—Their Judgment passed 14th Jany. 1786. Lt Governor Hope, a few days after, granted the Writ of Appeal, returnable on the 6th of March, and it remained suspended at the Time of our arrival. I don't recollect that any of the invective Pamphlets, against the Statute, and the administration that promoted it, tho' very free against its creating a dependant Legislature without an Assembly, & its Indulgence to the Catholics, ever made it a charge, that it subjected English Property, wholly and without any exception to the civil Jurisprudence of France.[1] Had it been so understood the Commerce of the Colony must have been extinguished.—There were not wanting Malcontents, both in the old Provinces and the Mother Country, to teach the Merchants that no Contract of Confidence here could be safe, without the previous Counsel of a French Advocate, for inflaming the Discontents of the Day. The Ideas of the Common Pleas are therefore, as I said, new, and I believe originated in the Colony.

The Parties in the cause that came before us were, Alexander Gray, Curator Bonorum, of his Father Alexander Gray of Edinburgh, who had been Administrator of his Brother John Gray against William Grant a Debtor to John Gray—Robert Grant who was appointed by the Prerogative Court of Canterbury, Administrator to the said John Gray, and Administrator also de Bonis non of the said Alexander Gray, appeared also in the cause as *Partie intervenante*, and both he and William Grant were Appellants. What might remain of the Personal Estates of these Intestates John Gray and Alexander Gray, after satisfying their Creditors in Great Britain, belonged to Alexander Gray's four Children ; all Resident at Edinburgh, except his son Alexder Gray, the Plaintiff in the suit ; a Scotch Attorney, who came here after his Father's Death and taught the Judges of the Prerogative Court of the Province, (Messrs Mabane, Dunn, and Panet, two of them the *very same*, who gave the Judgt in the Comn Pleas in confirmation of their own adjudication in the Prerogative Court, that it was not necessary to become Administrator, to acquire the Funds of the Intestates, but that under the *French* Law, he might decline accepting a share of the Inheritance devolved upon him by that Law, and obtain his end by their Appointment of him as Curator Bonorum, or Guardian of the Succession or Goods of his deceased Uncle and Father.

[1] See notes 1 & 2, p. 389.

The Court of Appeals was satisfied, that these Steps were as repugnant to the French Law, as they were to the Laws of England ; and this Question we handled as well as the other ; & we had but one opinion, with the exception of Messrs St Ours and Delery, two Canadian Gentlemen, to whom all I said, by their Inexperience in the English Language, must have been utterly unintelligible.

The sum in Controversy (between £8 and £900) is high enough to give the Respondent his Appeal, but he will probably prefer a new Suit as Administrator.

The great Question may very soon, and very often occur ; and as it is of such infinite moment, I thought it proper that His Majesty's Ministers should be early apprized of the Event ; that by their commands, we may receive the Light and Aid, which the King's Law servants are so able to afford.[1] All turns upon the simple but important Question,—Whether by the Quebec Act, the old Laws, and old Forms of Canada, give the Rule *exclusively*, in all controversies relating to Property in this Country, and bind in *every* Suit litigated in the Courts of Quebec, tho' the Parties and all Persons interested in it be His Majesty's natural born Subjects ?

I beg my best Respects to Lord Sydney, and am,
my dear Sir.
your most obedt and most humble Servant

Wm SMITH.

Evan Nepean Esqr

## FINLAY TO NEPEAN.[2]

Quebec 13th february 1787

Dear Sir

Tho' we have been a month in Council we have not as yet debated on any one Ordinance : the Chief Justice has proposed three ; they lie on the table. The draught of a Militia Law is now before a committee ; that, and the regulation of the Courts of Justice are objects of the first moment.

A well establish'd Militia will secure the Province, and if the King's Ancient subjects (comprehending the Loyalists) can but have English Law for the rule of decision in English causes, as laid down in his Majesty's 12th Instruction,[3] they'll be contented and happy : but our Judges of the Common Pleas set their faces against the introduction of English Law in all cases whatsoever; They say that they are warranted by the Quebec Act to declare and to uphold, that the intention of the King and Parliament was, that no Law but French Law should subsist in Canada, the English *Criminal* Law excepted.

[1] The question raised by Chief Justice Smith having been submitted to the British Attorney General and Solicitor General, they reported that the points raised by the Chief Justice as to the law which should prevail in Canada were so important that an appeal should be made to the Privy Council for a decision. See Q 28, p. 51.

[2] Canadian Archives, Q 28, p. 302.

[3] See p. 555.

Some people affect to call the King's Natural born subjects, *new Canadians*—He who chose, say they, to make Canada his place of residence lost the name of Englishman. The Old Canadians are those we conquer'd in 1760 and their descendants, the new Canadians are composed of emigrants from England, Scotland, Ireland, and the Colonies now the United States : by the Act of the 14th of his present Majesty[1] they are converted into Canadians, and Canadians they must ever remain. This doctrine is pleasing to the Noblesse or gentry of the Country, who will not easily get rid of French prejudices ;—but to cherish a predilection for every thing that is french, is not, in my opinion, the most likely means to make Englishmen of the Canadians. It is held here by some of His Majesty's natural born subjects, that the natives of this Province ought, as much as is possible, to be kept unmixed and unconnected with the other Colonists, to serve as a strong barrier, between our Settlements and the United States, "Its in- "habitants are numerous, and by Religion, Language, Laws & Customs are "the class of men the least likely to coalesce or unite with the neighbouring "States of America."[2]

Unless the Canadians can be brought to perceive that it is their int[e]rest to be attached to Great Britain, they will lean towards that Government which they may erroneously have conceived best calculated to promote their welfare ; we ought not to forget their lukewarmness in 1775—the better sort of the people in general, and the Clergy, behaved well, but we had little or no assistance from the peasantry, and all this arose from the insinuations of the Colonists, touching the supposed intention of the King and Parliament in passing the Quebec bill : it seems at present the wish of those who prefer french Law, and french Customs, to inculcate, that *if we introduce the English Commercial Law, the Estates and property of the Canadians will be annihilated*, and this has had an effect, and has produced some applications to Lord Dorchester, praying him to prevent the introduction of English Law in any case. These applications were founded on error.

I shall not even pretend at this day to guess how matters may go in Council this Session, tho' a Majority seem unwilling that any alteration should take place in the present System.

The English who carry on, I may say, 9/10ths of our Trade, pray for the introduction of the Commercial Law of England, and so do the Loyalists, who understand as little of the French Law, as of the French language.

Lord Dorchester will examine with attention & treat with candor the Reports now before him.[3]

I here take the liberty to trouble you with my opinion, that the introduction of the English Commercial Law can in no wise affect "the Titles or "tenures of Lands or the descent, alienation, incumbrances and settle-

[1] The Quebec Act. See p. 401.
[2] For an earlier expression of these views, see Carleton to Shelburne, p. 196.
[3] Referring to the Reports being prepared by Committees of the Council in 1786-87. So far as these bear upon the constitutional questions they are given below.

"ments of real Estates, or the distribution of personal property of persons "dying intestate," but if any inconvenience *should arise* from the introduction of the Commercial Law of England, the Legislative Council will have it in their power to remedy the evil: but I cannot help again observing that I do not conceive how the Laws of Commerce can affect the real property of any Canadian ; the ignorant or the designing may have sounded this alarm to procure applications to prevent the wishes of the Mercantile body from being complied with.

I am with real esteem, and much regard, Dear Sir
Your ever obedient and most humble servant
HUGH FINLAY

Evan Nepean Esq[r]

## FINLAY TO NEPEAN.[1]

Quebec 15[th] March 1787

Dear Sir

We have passed but one Ordinance this Session to ascertain the Qualifications of Jurors in Criminal causes; it was brought in by M[r] Smith, but sadly Mutilated by the Council. We wait the Chief Justice's return from Montreal before we take the Bills now before us under consideration, he is on his Circuit.

The most important Bills now on the Table are One "For the better "administration of Justice, and to regulate the practice of the Law."[2]
One "For the relief of the Poor by the Dispensation of Justice in small "causes" one "For regulating the Militia" and another "For lodging the "Troops in the Country Parishes, and for the transport of King's Pro- "visions &[c]"
the two first were proposed by the Chief Justice. In the face of them was brought in by a Canadian Member,[3] a Bill entitled "An Ordinance to regulate "effectually the proceedings in the Courts of Civil Jurisdiction"[4] and 'tis proposed to do this, by depriving the King's natural born Subjects of the benefit of trial by Jury in mercantile causes, and by substituting the French rule of evidence in commercial trials, in lieu of the English rule. M[r] Smith's Bill ought first to be considered, if we observe order ; but attempts have been made, and they will again be made to have both Bills presented to the same Committee at one and the same time, to be blended & considered as but one Project. *A Canadian Gentleman*, say those who pique themselves on their Noblesse, *will ever look on it as an indignity to be tried by their Peers, if men in Trade are to be considered in that light* ;—Whilst those very merchants whom they affect to despise may be far their Superiors in point

[1] Canadian Archives, Q 28, p. 306. Further and later views of Mr. Finlay on this subject will be found in C. O. 42, vol. 19, p. 93 and 141.
[2] This draught of an ordinance, as introduced by the Chief Justice, is given below, following this letter. See p. 847.
[3] Paul Roc de St. Ours.
[4] A copy of the Bill introduced by Mr. St. Ours is given in Q 32, p. 36.

of Birth Education and Fortune;—Mais c'est un homme commerçant, et tout est dit. However, as Juries are optional, the Canadian may elect another mode of Trial ; all controversies touching his landed property and his civil Rights are to be decided by the ancient Laws of the Country.

The gentry will retain those prejudices (the noblesse are a small proportion indeed of the Canadians) whilst the Judges, English Judges ! take pains to disparage that Mode of Trial. Would the French members of our Legislative Council but read the Works of some illustrious writers who treat of Government in their own language they would learn to prize the blessing of a trial by Jury. Though *they* like it not, why wish they to deprive Englishmen of that which they hold so dear? It is because they have been lately taught to believe that the introduction of the Commercial Law of England, will destroy the Security of their Possessions, and in time totally overset their municipal Laws, and this apprehension has arisen (as I have heard) from a late harangue from the Bench in the Common Pleas made in order to refute a doctrine advanced by His Majesty's Chief Justice in the Court of Appeals on the 29th of Decr.[1] None of the Judges of the Common Pleas were there present when Mr Smith enlarged on the intent and meaning of the Quebec Act relative to the rule of decision in certain Controversies, so that they must have spoken from *hearsay*. I was in Court and took notes. I trouble you with the substance of what Mr Smith said. I was not a little pleased to find that I had always been of Mr Smith's opinion.

In consequence of very reprehensible misrepresentations, and artful insinuations, fears were awakened ; and those who dread the introduction of the English Commercial Law, because ignorant of it, profited by alarms which they contributed to raise, & procured addresses to the Governor General expressive of apprehensions that the Canadians are about to lose the Benefits accorded to them by the Quebec Act.[2] Another ground of alarm was the Report from the Committee of Merchants, to the Committee of Council on Commerce and Police.[3] The French Advocates, it is said, were very busy in representing this as a glaring attack on the Civil Rights of the People of Canada.

To undeceive the Canadian People, and to quiet their minds, and in order to prevent falsehoods from spreading, some well intention'd Gentlemen beg'd leave to print the Chief Justice's Bill:—I take the liberty to send you a copy of it.[4]

The King's natural born subjects have been disquieted by a late proposal made by a Canadian Member of the Council, which would deprive the mercantile body of the benefit of Trial by Jury in Commercial causes, and their fears were not lessen'd when the Council refused to let them have

[1] Referring to the points discussed in the foregoing despatch of the Chief Justice, of Jan. 2nd. See p. 841.

[2] See Journals of the Legislative Council, Vol. E; Quebec petition, p. 6; Montreal petition, p. 16.

[3] Given below, see p. 902.

[4] This is the draught ordinance which follows this letter.

a copy of the Bill alluded to ; They had for answer to their Petition—That the Prayer of it, is of a nature not to be granted. I enclose a copy of the petition. The voices were equal, but the nays carried it, on the Parliamentary rule of, Semper presumetur pro negante.

I beg your pardon for troubling you with two letters for my friend Colonel Skene.

I have the honor to be, with very great esteem,
Dear Sir
Your obliged servant
HUGH FINLAY

Evan Nepean Esquire.

## DRAUGHT OF ORDINANCE FRAMED BY CHIEF JUSTICE SMITH[1]

Draught
of an
Act or Ordinance
for the better Administration of Justice,
and to Regulate the Practice of the Law,
in the
Province of Quebec :
Now laying on the Table of the
Honorable Legislative Council.
Introduction.

The Copy of this Draught of a Bill brought into the Council by the Honourable the Chief Justice, and now laying on the Table, was procured by some Gentlemen of Quebec and Montreal, and is printed at their own expence, to prevent mistakes and to set those to right who may have erroneously conceived that it has lately been in contemplation of any person or of any set of people in this province, to procure alterations in the Laws, unfavourable to His Majesty's Canadian Subjects, affecting either their property or civil rights : and they presume, the attention paid to the preservation of both, in the proposed Bill, will dissipate every uneasiness that may have been raised on that account, in the minds of their fellow-subjects.

*Quebec 12th March 1787*

Draught
of
An Act or Ordinance for the better Administration of Justice, and to Regulate the Practice of the Law.[2]

Whereas by a certain Statute passed in the fourteenth year of his Majesty's Reign, intituled "An Act for making more effectual Provision "for the Government of the Province of Quebec in North America,"

[1] Canadian Archives, Q 56—3, p. 679.
[2] Introduced 16th Feb., 1787, See Journals of the Leg. Council, Vol. E, p. 22.

It is among other things enacted, that all his Majesty's Canadian Subjects within the Province of Quebec, the *Religious Orders and Communities only excepted*, may hold and enjoy their Property and Possessions, together with all Customs and usages relative thereto, and all other their Civil Rights, in as large, ample and beneficial manner, as if a certain Proclamation and certain Commissions, Ordinances and other Acts and instruments in the said Statute referred to, had not been made, and as may consist with their allegiance to his Majesty, and subjection to the Crown and Parliament of Great-Britain, and that in all matters of Controversy, relative to Property and Civil Rights, resort shall be had to the Laws of Canada as the Rule for the Decision of the same, and that all causes that should thereafter be instituted in any of the Courts of Justice to be appointed within and for the said Province by his Majesty, his Heirs and Successors, should, with respect to such Property and Rights, be determined agreeably to the said Laws and Customs of Canada, until they shall be varied or altered by any Ordinances that shall from time to time be passed in the said Province by the Governor, Lieutenant-Governor or Commander in Chief for the time being, by and with the advice and consent of the Legislative Council of the same, to be appointed in manner in the said Statute aforementioned.[1]

And whereas two certain Ordinances of this Province have been passed for regulating the practice in the Courts of Civil Judicature, the first[2] of which was in force from the time of its being enacted in the seventeenth year until the twenty-fifth year of his Majesty's Reign, when a new Act[3] was passed for that purpose with divers alterations, which is nearly expiring.

And whereas his Excellency the *present* Governor of the said Province hath been pleased to communicate to the Legislative Council, divers Articles of his Majesty's Instructions respecting the Administration of Justice, the twelfth article whereof is in the words following, to wit :

"The Establishment of Courts, and a proper mode of administering "Civil and Criminal Justice throughout the whole extent of our Province, "according to the principles declared in the said Act for making more "effectual Provision for the Government thereof, demand the greatest care "and circumspection, for *as on the one hand* it is our gracious purpose, "conformable to the spirit and intention of the said Act of Parliament, that "our Canadian Subjects should have the benefit and use of *their own Laws*, "Usages and customs *in all* controversies *respecting* Titles of Land, and the "Tenure, Descent, Alienation, Incumbrances, and Settlements of Real "Estates, and the distribution of personal property of persons dying intestate; "so *on the other hand* it will be the duty of the Legislative Council to consider "well in framing such Ordinances as may be necessary for the Establishment "of Courts of Justice, and for the better administration of Justice, *whether*

[1] See The Quebec Act, p. 573.
[2] The Ordinance of 1777. See p. 682.
[3] The Ordinance of 1785. See p. 780.

"the Laws of England may not be, *if not altogether*, at least in part the rule "for the decision in all cases of personal actions grounded upon debts, "promises, contracts and agreements, whether of a mercantile or other "nature, and also of wrongs proper to be compensated in damages, and "*more especially where* our natural born Subjects of Great Britain, Ireland "or other Plantations, residing at Quebec, or who may resort thither, or "have credit or property within the same, may happen to be either Plaintiff "or Defendant in any Civil suit of such a nature."[1]

And whereas the Commerce of the Province is almost intirely in the hands of Merchants who are his Majesty's natural born subjects, and it is essential to the encrease and tranquility, growth, prosperity, and strength of the Province, that the administration of Justice be *regulated in such manner as to give safety*, not only to all the inhabitants of the Colony, but to such of their fellow-subjects as they may have intercourse with in other parts of his Majesty's dominions, and especially in Great Britain and Ireland, from whence those supplies and credits are chiefly to be obtained, by which the raw materials and natural resources of this extensive Province are to be drawn forth into the common stock and commerce of the British Empire.

And whereas the aforementioned Ordinances, on account of the peculiar condition of the Country, under a recent change of Government, could *only be laws of experiment* and temporary expediency, to be altered and amended as occasion might require for perfecting the security of all his Majesty's Subjects, and the said Ordinances *have not given the satisfaction expected by the people* for the safety of *their rights and property*, and especially in the proceedings that affect their important concerns of a Commercial nature.

And whereas at the close of the late war on this continent, his Majesty was pleased in his great wisdom and grace to afford a refuge in this part of his Dominions, to many thousands of his natural born Subjects from the United States of America, who having suffered the loss of their Property for their faithful adherence to his Government and attachment to the British cause, are become objects of the national confederation, and are chiefly collected together upon divers parcels of the waste lands of the Crown, and their relief and comfort require very special Provision, suited to their circumstances, *that* all the inhabitants of the Colony, tho' originally of different Provinces and Governments, *may be United in Harmony* and Mutual affection, under the Gracious and Benevolent protection of their common Sovereign ;

§1 Be it therefore enacted and ordained by his Excellency the Governor and the Legislative Council, and it is accordingly hereby enacted and ordained by the authority of the same, that for the better encouragement of his Majesty's Subjects, and their Ease and convenience under a due administration of

[1] See instructions to Lord Dorchester, 1786, 12th article, p. 820.

Justice, it shall be lawful for his Excellency the Governor, or the Commander in Chief of the Province for the time being, with the advice of the Council, by Patent under the Great Seal of the Province, to form one or more new Districts therein, to be afterwards Organized by Commission and Commissions for the Creation and appointment of all such Offices and Officers within the same, as may appear to be most necessary or conducive to the purposes aforesaid, any thing in any former Law or Ordinance of the Province contained to the contrary thereof notwithstanding.[1]

And for the security and contentment of such of his Majesty's Canadian subjects as have, or may have Property in such new District or Districts. Be it further enacted by the same authority that in all their controversies respecting Titles of Land, and the Tenures and Descent, Alienation, Incumbrances and settlements of Real Estates, and for the distribution of Personal Property of persons dying intestate, such Proceedings shall be had therein as will give them the full Benefit and Security intended by the Statute abovementioned, and that every clause and Article in any of the said Patents and Commissions for forming such new District and Districts, and the administration of Justice in the same to the contrary, shall as to his Majesty's Canadian Subjects be absolutely null and void.

And for amending the present Ordinances relating to the course of Judicature in Civil Causes.

§2. Be it also enacted by the same authority, that the Courts of Common Pleas shall have no cognizance of any new cause to be legally brought in any of the Courts of Request after the erection of the same, by Virtue of another Ordinance of the present Session, entituled, *"*An Act or Ordinance for the "relief of the poor by the Dispensation of Justice in small Causes."*

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[1] Appended to this paragraph is the following marginal note, evidently inserted by Finlay when sending the draught:—"this first Section of y^e^ Law, with the §7 was to introduce the Laws of England into all the upper part of the Province, and among all the old Subjects in the lower part; and leave the Canadians to the Coutume &c^a^ until they should be *Enlightened*." Though this bill did not pass, yet in the Ordinance for continuing for a time that of 1785 to regulate the Proceedings in the Courts of Civil Judicature, being 27 Geo. III., cap. 4, a clause was introduced providing for the erecting of new Districts and for their administration. See below p. 860.

[2] This is the title of a bill or draught ordinance, summarized by Finlay in the appended note, which was also introduced by the Chief Justice but which failed to pass. In the Ordinance, however, of 27 Geo. III., cap. 4, which continued the old Ordinance with some amendments, a clause is introduced, "Respecting Dispensation of Justice in Small Causes," which secures the central object of this bill. See below, p. 860.

*The Bill here referred to, enables the Governor by Letters Patent, to parcel out the Province into Precincts or Circles comprehending several contiguous Parishes, and to appoint in each Precinct three commissioners from the principal Inhabitants; and authorizes them, or any two of them to hold a Court of Requests once a month, or oftener if need be for the Precinct.

There is to be a Clerk for every Circle to keep an Office and give out the Summons or Process. —A Serjeant to execute the Process is in the appointment of the Commissioners.

The Court of Requests is competent for causes under £10, except in certain causes involving questions that are not proper for a summary decision.

The Court is minutely directed, and the Judgements final without Appeal, because the main object is to relieve the poor and the distant inhabitants.

For the same reason the Fees are low and the proceedings quick, and very plain and simple.

The Bill proceeds upon the Supposition, that there are public spirited Gentlemen to be found up and down the Country, who will not refuse in turn to be Judges between their neighbours; for they are not to have authority out of their own Circle.

As it is possible that the Commissioners in some Circles, may not be able to afford to give so much of their time to their Countrymen as may be required, a fee is allowed to the sitting Judges on every Judgement; if they please to take it.

The Governor may form a Circle as soon as he finds fit Commissioners for it, and they may dispense Justice in either language.

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And respecting the Trial of Causes above Ten Pounds sterling, and such beneath that Sum, of which the Courts have cognizance, the same shall be proceeded in, heard and determined only in regular Terms, consisting of the first 14 days, Sundays and Holydays excepted, in the months of June, August, October, December, February and April yearly, the first return days whereof shall always be the first day of the Term, and the rest and the general Rules of Practice, such as the respective Judges of the Common Pleas may state in a formulary, and present to the Provincial Court of Appeals, who shall have authority from time to time to establish the same.

rules of practice to be made by Com. P & estab. by Co. of Appeals.

And it being *indispensibly requisite* to the safety of Property in every suit at Law, *to exclude* all Legislative authority *from being united with the exercise of the Judicial Power* of the said Courts of Common Pleas, lest the Estates and Rights of the People should be subject to the erroneous or arbitrary opinions of the Judges.

§3. Be it enacted by the same authority, that in every Instance where the fact is not verified by a Verdict of the Jury, but by other proof, or the testimony of witnesses, the same shall be inserted in the Record of the Cause, that in Case of Appeal, the whole Proceedings may go up to be adjudged in the Superior Tribunal, as regularly, and as fully as the same was before the Court below.

And *wherever the opinion or judgement of the Court*, is pronounced upon any Law, usage or custom of the Province, the same *shall* in like manner be *stated upon the Minutes or Record of the Court, and referred to and ascertained, that the real Ground of the Opinion or Judgement* may also appear to the Court of Appeals, AND UPON ALL opinions conceived by any Party to be to his Injury, he shall be allowed his exception to be preserved in the minutes, all which proceedings shall be transmitted under the Signatures of the Judges or any two of them, and the Seal of the Court, that all his Majesty's subjects, and especially his Canadian subjects, by these means may be effectually protected in the enjoyment of all the Benefits secured to them for their Property and Civil Rights by the Statute and Ordinance aforesaid.

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Nothing is made a requisite qualification but integrity and a good sound understanding. The Judges will be standing Arbitrators for their Circle.

All the Officers of the Court of Requests are to be upon Oath. There are Guards against perjuries, contempts and Extortions.

Until a Parish is in some Circle, the old Course of *Tournée*, is to continue there, and when incircled it is to cease as to that Circle and all the Parishes it includes, and the Inhabitants be saved from all the waste of time, trouble, and charge of referring for Justice to Quebec and Montreal: and it is thus hoped that a general spirit of useful Industry will spread through the Province, and contentment be given to all, as their differences will thus be speedily adjusted, by those to whom, as neighbours, they may have easy access, and by whom the Parties will be known.

These Commissioners are not to be Justices of the Peace, nor the Justices to be Commissioners, the confounding these Trusts in the same Person being subject to many objections, as former experience has shewn here and elsewhere, in the low Character of Trading Justices as they are called.

The Justices are to be left to their proper business in preserving the public Peace, and preventing and punishing Crimes. *Private Disputes* will be settled by the Commissioners in the Court of Requests for the people, by their own Countrymen, and as it were at their own Doors, and according to good Conscience and their own usages, and in their own language, every man managing his own cause by himself or his friend. No Lawyers to be there, unless both Parties chuse to have their assistance.

And to take away all doubts and scruples with respect to the Right of Appeal in any Cause before the said Courts of Common Pleas,

§4. Be it enacted and declared by the same authority, that the Court of Appeals shall be deemed and adjudged to have an Original Appellate Jurisdiction with all the Power necessarily annexed to such Jurisdiction, and *that* it shall henceforth *belong* to the provincial Court of Appeals *to determine the Question when security shall be requisite and the sufficiency thereof*, and the Admission, Dismission or Remission of Appeals, and the supply of the *Defects of the Record*, and of the effect of the Appeal as a Supersedeas of all or any Proceedings in the lower Courts for the stay of Execution on the Judgements of the same, or any Process of the nature of Execution, with *authority also to make rules and orders to regulate, effectuate and accelerate the Proceedings in all causes of Appeal* for the advancement of Justice, and to prevent unnecessary delays and expence in the same.

And to strengthen the security of the subject for his Estate and Rights, even in the said Court of Appeals ;

§5. Be it further enacted and ordained, by the same authority, That none of the Members of the Court of Appeals shall presume to sit upon the Bench thereof, until he shall have taken an Oath before the Governor for the time being, that he will faithfully serve our Lord the King and his People, in the Office of Judge of the Court of Appeals in this Province, and that he will do equal Law and Execution of Right to all the King's Subjects, rich and poor, without any regard to any person, that he will not take gift or reward of any man that shall have Plea or Process before him, and that he will deny no man common right by the King's letters, or any other man's, and that in case any letters come to him contrary to the Law, that he will do nothing by such letters, but certify the King thereof, and proceed to execute the Law according to the best of his Knowledge and Judgement.

§6. And be it also enacted by the same authority, That it shall be *sufficient to disqualify* any Member of the Legislative Council from sitting as *Judge in any Cause of Appeal*, that he is interested in the event of it, or related to either of the parties interested in the same, or that he is a Judge of *either* of the *Courts* of Common Pleas, or that he was absent at any former hearing in such Cause of Appeal.

And because his Majesty's Canadian Subjects *cannot suffer* detriment by trials *according to the English Laws* and course of practice in controversies *in which they are not concerned*, between his Majesty's natural born subjects, *who have also their predilection* and attachments to the modes of trial conformed to their own customs, and in deference to his Majesty's instruction above recited ;[1]

[1] In connection with this clause there is inserted the following marginal note:—"To introduce the Com. Law of England as y^e^ Rule &^c^ between y^e^ old Subjects conformable to opinion & Judg^t^ in Appeal ded. 1786. Case Grant v Gray and conform y^e^ new Subjects or Canadians to y^e^ Coutume de Paris & Civil Laws." This refers to the judgment delivered by the Chief Justice and which gave rise to much discussion. It is referred to in the letter from Chief Justice Smith to Nepean, see p. 841, also in that of Finlay to Nepean, see p. 845. The judgment of the Court of Common Pleas is given in Q 27-1, p. 28, and the judgment in appeal at p. 26.

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§7. Be it also enacted, That as often as the Party plaintiff in a cause, *being one* of his Majesty's natural born subjects, *shall commence* his Action against another person that is *not* one of his Majesty's Canadian subjects *according to the course of the common Law, the same Cause shall proceed to the end thereof in the same course, and have all its legal consequences and effects, as if the same had been begun and prosecuted in the Common-Pleas of Westminster-Hall*, as nearly as the condition of the Province will permit ; and for the fullest security of his Majesty's Canadian subjects in the enjoyment of the ancient Laws, Usages and Customs of Canada, every such suit shall abate whenever the defendant shall plead or alledge that he is one of his Majesty's Canadian Subjects, or descended from any person that was so at the Conquest, in the paternal or maternal line, and the question of fact, whether he is or is not, *shall be tried* and determined by the Court *without a Jury*, and if the facts shall be found for the Defendant by the Court in manner aforesaid, judgement of *non pros* shall be entered against such Plaintiff for the Defendant, and the Defendant recover his Costs.

§8. And be it also enacted by the same authority, That in all causes where the Sheriff is a party, *or shall appear to the Court to be exceptionable and not indifferent* between the parties in any cause, the process shall go to the Coroner.

§9. And where Appeals are brought by executors, administrators or guardians, the Plaintiff shall not have execution nor any process in the nature of execution, without such security first given as the Court of Common-Pleas in their discretion shall direct, to refund the damages and costs in case the judgement shall be reversed, together with such costs as the Court of Appeal may award.

And whereas *great inquietudes have arisen in the Colony within four years past*, respecting certain processes against estates and effects, seizing and arresting the same, *and divesting* the proprietor thereof *without previous trial and judgement* at law between the parties, which proceedings pass in France under the name of *saisie arrêts*, and *saisie exécution, tho' they are there* exercised under special guards, would be very mischievous if practiced against the poor inhabitants of this province, and especially *as the Sheriffs* and the subordinate executive agents *are not yet* under *any bonds with sureties* for their demeanor, and it is more expedient in so infant a country to leave Creditors in general to the caution prudence requires against negligent confidences, *than to introduce the rapid measures of ancient* and populous nations against complicated frauds and bankruptcies.

§10. Be it further enacted by the same authority, That no such process shall hereafter be issued except for attaching the estates and effects of persons concerned in traffic, and only then for debts exceeding the Sum of Fifty Pounds Sterling, after Oath before the Judge issuing the same, of the amount of the debt and of the demand of payment thereof, and that there is good cause to apprehend the loss of the debt without such process, which oath shall be indorsed thereon.

And the seizure to be afterwards made shall remain in the hands of the Sheriff, subject to such orders as the Court may afterwards take respecting the same. But whenever the Owner thereof shall either pay the debt and costs or give security to answer the value of the same, and to abide the judgement of the Court, the Estate and effects so seized shall be forthwith restored.

And in the prospect that the aforementioned amendments and alterations in the Civil Jurisprudence *will suffice* with the provisions already made by the former Ordinances until experience shall direct to such improvements as the case of *all* his Majesty's subjects whether Canadian *or others may require* for the perfect establishment of their property, rights, and interests, *and for promoting their mutual affection* and the general tranquillity of the province, by the removal of every jealousy and discontent injurious to the King's government and the common welfare ;

Canadians to ask y^e Eng. Com. Law.

Be it therefore enacted by the same authority, That the Act or Ordinance passed in the twenty-fifth year of his Majesty's Reign, intituled, "An "Ordinance to regulate the proceedings in the Courts of Civil Judicature, and "to establish trials by Juries in actions of a commercial nature, and personal "wrongs to be compensated in damages,"[1] so far as the same is not altered and amended by the provisions in this Act above contained, shall continue to the day of April, which will be in the year of our Lord one thousand, seven hundred and eighty-nine, at which time this Act for making the several amendments therein aforementioned shall also expire.

*Finis*

## EXTRACTS FROM PROCEEDINGS OF COUNCIL.[2]

Monday 26th March 1787.

His Honor The Lieutenant Governor, and all the other Members above.

[William Smith Esq^r. C. J., Mr. Harrison, Mr. Mabane, Mr. De Lery, Mr. Fraser, Mr. Grant, Mr. Baby, Mr. Holland, Mr. Boucherville, Mr. Findlay, Mr. Collins, Mr. Pownall, Mr. Bellestre, Col. Caldwell, Mr. De St. Ours, Mr. De Longueuil, Sir John Johnson, Dupré.]

The Chief Justice presented a Protest signed by him and the eight other Members against the Vote of the Council upon the Question of the 22nd instant for Commitment of the Bill for the better Administration of Justice, and to regulate the practice of the law.—Read the same—Ordered to be translated, and entered on the Journals.

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[1] See p. 780.

[2] Canadian Archives, Journals of the Legislative Council, Vol. E, p. 47. See also Q 27-2, p. 645. At the session of the Legislative Council, on March 22nd, the Chief Justice moved, with reference to his bill "for the better Administration of Justice, and to regulate the practice of the Law," "That this Bill be committed to a Committee of the whole Council for Friday the 30th instant," and the motion being put it was defeated by ten to nine. Journals of the Legislative Council, Vol. E, p. 46. See also Q 27-2, p. 643. At the next meeting of the Council the Chief Justice and his supporters registered their protest.

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THE PROTEST.

First—Because the refusal to commit the Bill, implies a disapprobation of every part of it as incapable of being so altered as to retain a single Clause, and amounts as clearly to a rejection of every paragraph of it, as if each had been separately Voted to be struck out ; and it was so explained and understood, and that intention avowed, by every Speaker against the Committment.

Second—Because the regulations for the administration of Justice in all the Courts of Common Pleas, as well as in the Monthly Court of Appeal, were so obviously expedient to the Eye of meer abstract Theory, as to require only to be read to be approved, and might have been contended for by the Judges, without any disparagement of Character or Office, and served for no mean defence against the Clamours and Complaints, to which Courts, where the Judges find both Law and fact, are obnoxious; and especially in such a Country as this, where they also hold the mighty trust of settling the Question, what was or was not, the custom and usage, as well as the Law of the Colony, antecedent to the Conquest.

Third—Because one of the best securities for the permanent duration of the privileges granted by the Statute, commonly called the Quebec Act, to His Majesty's Canadian Subjects, is their ready manifestation of a Correspondent Liberality to His Majesty's Native born subjects, thro' the voice of that Legislature which the Statute erects, and of which His Majesty has constituted so many of the Canadian Gentlemen to be Members. The Bill pointed to a measure for shewing such a disposition, without the smallest Infringement of the benefits granted by the British Parliament to themselves, and it had succeeded, if only one of them, had given his voice for the Committment, the Question being decided by the Chair.

Fourth—Because the postponing the Relief which according to this Bill the Governor was to be enabled to afford to the American Loyalists settled on Our Frontiers, to us appears inconsistent with the interests of the Crown, and repugnant to every motive of sound policy, as well as the sympathy we ought to have for those, who with so much honor to themselves have sacrificed every consideration of private Interest, to their faithful affection for their Sovereign and the British cause, and to whom as Subjects of tried Loyalty, & men of Arms, this Province may one day be obliged to look for its defence & protection; to say nothing of what became the Kings Servants here to have done for Sufferers of such distinguished Merit, in obedience to the Royal commands, communicated to General Haldimand, by a letter from Lord North, of which the following is a Copy.

"Whitehall 24th July 1783.

"The distressed situation to which many of His Majesty's faithful "subjects in the Provinces and Colonies, now the United States of America, "are reduced by adhering to their Loyalty and supporting the British

"Constitution, has induced his Majesty to afford them every encourage-
"ment due to their zeal and sufferings, and as Numbers of those deserving
"Loyalists may wish to settle in Quebec, it is His Majesty's pleasure that
"every assistance and support should be held out to them."[1]

Fifth—Because the Bill was framed to heal the divisions and animosities which have so long subsisted in the Colony to its disgrace and detriment, and we are fearful that the rejection of it will not only revive a spirit, which as a party one in the trite game of selfish ambition and avarice, for petty consequence, Place and Profit, is always contemptible, and sometimes harmless, is nevertheless to the last degree dangerous, in a Country of mixed Nations Habits and Languages, where the name of party, if the contest respects the Substantial interests of the Crown and Nation, will be changed into the serious discrimination of the Loyal and the disaffected : and we are the more anxious for the general harmony as the discords by increasing the debility of the Province, predisposes it to become a Theatre for the Malignant machinations of the internal malcontents of Great Britain and the hostile views of foreign powers.—

Sixth—Because without some regulations to quiet the murmurs against the course of administring Justice which has obtained here for years past, expressed in the Reports on Our Table, from the Magistrates and Merchants of the Province,[2] and the Complaints to the King's Ministers by the Merchants of London, the commerce and settlement of the Colony cannot advance, in the course necessary to give it strength for its own security, and cover the two other Provinces,[3] fortunately for all of them, committed to the wisdom and vigilance of the Noble Lord, who is so well disposed and qualified to raise them to safety and prosperity if their own cheerful cooperation shall not be wanting.

Last—Because thro' the whole debate for the noncommittment of the Bill, which has had but a single reading (it being the course of this Council contrary to Parliamentary usage to commit it before a *second* reading) nothing was offered in our Opinion, of the least weight against the Bill, unless there be supposed good cause for the insinuation of the Honourable Judge of the Common pleas who was alone it, that the Preamble was exceptionable on account of its having recited that part of the Quebec Act, excluding the *Religious houses and Communities* from the benefit of the Laws and usages given to other Catholics ; to which the Speaker added his regret at the bare mentioning in Conversation without doors as another matter tending to dissatisfy the Catholick Inhabitants the King's late gift or intended munificence out of the Estates of the dissolved and banished Order of Jesuits to an Individual, meaning the Right Honourable Lord

[1] The communication, of which this is an extract, is given in full in B. 45, p. 103.
[2] See below:—Report of the Committee of the Council relating to the Courts of Justice, p. 874.
[3] Referring to Nova Scotia and New Brunswick, now placed under the general administration of Lord Dorchester. See note 2, p. 810.

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Amherst.[1] Respecting which, we are persuaded and think it just to declare, that the ill Temper and Spirit implied by the suggestion, as existing in the Colony, has as yet neither that degree of Inveteracy nor extent, to require any timid condescensions from the executive and Legislative Authority subversive of the Government ; and we conceive that if the fears of the Speaker, really had any foundation, the Bill stood for that reason upon the stronger ground, not only for the Committment he opposed, but the enacting it, to all the extent of its objects for gratifying the reasonable expectations of His Majesty's good and Loyal Subjects, for the promoting the population of the Country, and the speediest removal of every cause of discontent upon the interesting points of Commerce, and the right administration of Justice; without which no people can exist in safety and peace, and a Commercial people the least of all others.

We lament therefore the loss of this Bill as embarrassing, if not defeating the provisions expedient for the Interests of the Crown, as unfriendly to the Commerce of the Nation, as distressing to the Loyalists who have fled to our Borders for refuge, and have the most unexceptionable Claim, at least to Legislative regulations for their comfort, as tending to distract the minds of the Inhabitants with Jealousies, to the reducing of the force of the Colony; and as the consequence of all, the exposing of it to the operation of foreign principles, smoothing the way to an Invasion. And this Protest we make in Vindication of Ourselves to His Majesty and his Representative, and with the sincerest desire to preserve the tranquility of the Province, and the Interest of every order of Men in it, Protestants and Catholics, by all the means that may consist with our duty to the Crown, and a warm and affectionate regard for the general weal of the British empire.

Quebec Mond. 9 o'Clock A.M.
26th March 1787.

(signed)

Wm Smith
Hugh Finlay
Edwd Harrison
John Collins
Geo Pownall
Henry Caldwell
William Grant
Samuel Holland
John Johnson.[2]

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[1] In 1770 Lord Amherst had petitioned for and been promised the Estates of the Jesuits. See Q 56-3, p. 846. But during the year 1787 quite an agitation arose to have these estates devoted to education. See various petitions and papers in Q 35, pp. 62-116. See also the very full reports on the Jesuit Estates contained in vols. Q 50-A, 50-B, 50-C, 50-E, 50-F, 50-G, 1 & 2 and 50-H.

[2] When the Ordinance of 27 Geo. III,. cap. 4, which follows this document, had passed, Messrs Harrison and Holland prayed leave to strike out their names from this Dissent; "the ends for which he signed the same having being obtained in the Ordinances which have since been passed by the Council. Ordered accordingly." Journals of the Legislative Council, Vol. E, p. 119.

# ORDINANCE *RE* PROCEEDINGS OF CIVIL COURTS[1]

## ANNO VICESIMO SEPTIMO GEORGII TERTII REGIS.

### CHAP. IV.

An Ordinance to continue in Force for a limited Time an Ordinance made in the 25th Year of His Majesty's Reign, intituled, "An Ordinance to regulate the Proceedings in the Courts "of Civil Judicature, and to establish Trials by Juries in "Actions of a Commercial Nature, and Personal Wrongs, "to be compensated in Damages,"[2] with such additional Regulations as are expedient and necessary.

Be it Enacted and Ordained by His Excellency the Governor, and the Legislative Council, and by the Authority of the same, it is hereby Enacted and Ordained, That an Ordinance made and passed the Twenty fifth of April, in the Twenty fifth year of His Majesty's Reign, intituled, "An Ordinance to regulate the "Proceedings in the Courts of Civil Judicature, and to establish "Trials by Juries in Actions of a Commercial Nature, and "Personal Wrongs, to be compensated in Damages," and every Clause and Article therein contained, be continued, and the same is hereby continued from the expiration thereof to the end of the Sessions of the Legislative Council which will be held in the Year of Our Lord 1789.

The former Ordinance to be continued for Two Years.

And whereas Additional Regulations are at this Time found to be expedient and useful ; Be it further Enacted by the same Authority, That in every Instance where the Fact is not verified by a Verdict of the Jury, but by other Proof, or the Testimony of Witnesses, the same shall be inserted in the Record of the Cause, that in case of Appeal the whole Proceedings may go up to be adjudged in the Superior Tribunal, as regularly and as fully as the same was before the Court of Common Pleas.

In Cases where there is no Jury, the Fact to be inserted in the Record.

And wherever the Opinion or Judgment of the said Court of Common Pleas is pronounced upon any Law, Usage, or Custom of the Province, the same shall in like manner be stated upon the Minutes or Record of the Court, and referred to, and ascertained, that the real ground of the Opinion or Judgement may also appear

If the Judgment be upon any Law, Usage or Custom of the Province, the same to be stated upon

[1] Canadian Archives, Q 62A-2, p. 634. See also Ordinances of Quebec 1763-1791, p. 191. The rival bills of the Chief Justice, representing the English element, and of St. Ours, representing the French interest, were defeated, with the result that the Council fell back by compromise upon the renewal of the Ordinance of 1785. However, in the amendments introduced into this, while passing through Committee, there were embodied many of the most important features of the measure introduced by the Chief Justice. The interesting progress of the bill through the Committee, with the numerous amendments proposed and defeated, may be followed in the Journals of the Council. Journals of the Legislative Council, Vol. E, pp. 70-121 See also Q 27-2, pp. 737-761.

[2] See p. 780.

the Record of the Common Pleas. Exception to be allowed.

to the Court of Appeals, and upon all Opinions conceived by any Party to be to his Injury, he shall be allowed his Exception, to be preserved in the Minutes ; all which Proceedings shall be transmitted under the Signature of the Judges, or any Two of them, and the Seal of the Court, that all His Majesty's Subjects, and especially His Canadian Subjects, by these means may be protected in the Enjoyment of all the Benefits secured to them for their Property and Civil Rights, by the Statute passed in the 14th year of His Majesty's Reign intituled, "An Act for making "more effectual Provision for the Government of the Province "of Quebec, in North America," and by the Ordinances abovementioned.

The Same in the Court of Appeals.

And be it further Enacted by the Authority aforesaid, That in all Cases adjudged in the Provincial Court of Appeals, where the same may be appealed to His Majesty in His Privy Council, and where their Opinion or Judgment is pronounced on any Law, Custom or Usage of the Province, the same shall in like manner, and for the same Reason as hereinbefore mentioned, be stated upon the Record, or referred to and ascertained.

Four Terms in the Year Established.

And, in all Causes of which the Common Pleas have Cognizance above Ten Pounds Sterling, the same shall be proceeded in, heard, and determined only in regular Terms, consisting of the First Fifteen Days (Sundays and Holidays excepted) in the Months of January and July, and the last Fifteen Days of March and September, Yearly, the First Return Days whereof shall always be the First Day of the Term, and the rest of the Return Days, and the General Rules of Practice, such as the respective Judges of the Common Pleas shall fix in a Formulary.

Appellate Jurisdiction of Court of Appeals,

And, to take away all Doubts and Scruples with respect to the Right of Appeal in any Cause before the said Court of Common Pleas. Be it Enacted and Declared by the same Authority, That the Court of Appeals shall be deemed and adjudged to have an Appellate Jurisdiction, with all the Power necessary annexed to such Jurisdiction ; and that it shall henceforth belong to the Provincial Court of Appeals to determine the Question when security shall be requisite, and the sufficiency thereof, and the Admission, Dismission or Remission of Appeals, and the supply of the Defects of the Record and of the Effect of the Appeal as a Supersedeas of all or any Proceedings in the Lower Courts for the stay of Execution on the Judgment of the same, or any Process of the nature of Execution, with Authority also to make Rules and Orders, to regulate, effectuate and accelerate the Proceedings in all causes of Appeal, for the Advancement of Justice, and to prevent unnecessary Delays and Expence in the same.

touching Security.

Where Executors &c appeal, the Plaintiffs to give Security to refund before Execution issues.

And, where Appeals are brought by Executors, Administrators, Curators, Tutors or Guardians, the Plaintiff shall not have Execution, nor any Process in the nature of Execution, without such security first given as the Court of Common Pleas in their Discretion shall direct, to refund the Damages and Costs, in case the Judgment shall be reversed, together with such Costs as the Court of Appeals may award.

Respecting Dispensation of Justice in Small Causes.

And, for the more convenient Dispensation of Justice in small Causes, It is enacted and Ordained by the same Authority, that it shall and may be lawful for his Excellency the Governor, or the Commander in Chief of the Province for the Time being, by and with the advice and consent of His Majesty's Council, to appoint by Commission such and so many Persons as he shall Judge fit, and for such Parts of the Province as he shall think proper, to hear summarily, and to determine finally, without Appeals, all Matters of Debt of Ten Pounds or under ; and it shall likewise be lawful for His Excellency the Governor, or the Commander in Chief for the Time being, by and with the Advice and Consent of His Majesty's Council, to regulate the Fees to be taken by the Persons so commissioned, and by their Subordinate Officers, and to direct a mode of proceeding for them, whereof, and the extent of their Jurisdiction respectively, a Notification shall be published in the Quebec Gazette, for the Information of all Persons whom it may concern.[1]

New Districts may be formed by Patent for the remote parts of the Province.

Whereas there are many Thousands of Loyalists and others settled in the Upper Countries above Montreal, and in the Bays of Gaspy and Chaleur, below Quebec, whose ease and convenience may require that additional Districts should be erected as soon as Circumstances will permit ;—It is Enacted and Ordained by the Authority aforesaid, That it may be lawful for the Governor or Commander in Chief for the Time being, with the Advice and Consent of the Council, to form, by Patent, under the Seal of the Province, one or more new Districts, as his Discretion shall direct, and to give Commission to such Officer or Officers therein as may be necessary or conducive to the ease and convenience of His Majesty's Subjects residing in the remote Parts of the Province.[2]

Attachments in certain Cases only.

And be it further Enacted by the Authority aforesaid, That no Process of Attachment, except in the case of the Dernier Equippeur, according to the usage of the Country, shall hereafter be issued for Attaching the Estate, Debts and Effects of what Nature soever, of any Person or Persons whomsoever, whether

[1] This clause embodies the essential features of the bill mentioned in §2 of the draught ordinance of the Chief Justice; see p. 851.

[2] This clause embodies the chief features of §1 of the draught ordinance of the Chief Justice; see p. 850.

in the Hands of the Owner, the Debtor, or a Third Person prior to Trial and Judgment, except where there be due Proof on Oath (to be indorsed on the Writ of Attachment) to the Satisfaction of one of the Judges of the Court issuing the same, that the Defendant, or Proprietor of the said Debts and Effects, is indebted to the Plaintiff in a Sum exceeding Ten Pounds, and is about to secrete the same, or doth abscond, or doth suddenly intend to depart from the Province, with an Intent to Defraud his Creditor or Creditors, and that the Defendant is then indebted to the Plaintiff, and he doth verily believe that he shall lose his Debt, or sustain Damage, without the Benefit of such Attachment.

Proviso.

Provided always, That nothing herein contained shall be construed to the Prejudice of the Rights of Landlords, in their legal Course, for the Recovery of Rents, according to any former Mode of Proceeding by any Law, usage, or Custom whatsoever ; and provided also, that whenever the Defendant or Debtor shall either pay the Debt and Costs, or give Security to the Sheriff or Officers for the goods so attached, as in Cases of Bail on Personal arrests, subject to Justification in Court to answer the Value of the Goods, and abide the Judgment of the Court, the same shall be forthwith restored ; and for that Purpose the Defendant or Debtor shall be allowed Forty Eight Hours, after which Period, if the Debt and Costs be not paid, nor Security given, the Goods so seized shall remain attached, and held by the Sheriff or Officer to answer the Judgment of Law.

These Additional Regulations to be in Force for Two Years.

Be it further Enacted by the Authority aforesaid, That the additional Regulations hereby Enacted shall be in force until the end of the Sessions that shall be held in the Year of our Lord 1789, or as long as the Ordinance hereby renewed ; and that the Ordinance passed in the Twenty-fifth year of the Reign of his present Majesty, intituled, "An Ordinance for granting a limited "Civil Power and Jurisdiction to His Majesty's Justices of the "Peace in the Remote Parts of the Province"[1] be no longer in force than until such small Jurisdictions as by this Act are authorized shall be actually erected.

Enacted and Ordained by the Authority aforesaid, and passed in Council under the Public Seal of the Province, at the Council Chamber, in the Castle of S$^{t}$ Lewis, in the City of Quebec, the 30$^{th}$ of April, in the 27$^{th}$ Year of the Reign of our Sovereign Lord George the Third, &$^{c}$ &$^{c}$ &$^{c}$ and in the Year of our Lord 1787.

By His Excellency's Command,

(signed). J. W. MEARNS

C.L.C.

[1] This was the Ordinance of 25 Geo. III., cap. 5. See Ordinances of Quebec, 1763—91, p. 169.

# ORDINANCE *RE* CRIMINAL COURTS.[1]

## ANNO VICESIMO GEORGII TERTII REGIS.

### CHAP. VI.

An Ordinance to Explain and Amend an Ordinance for establishing Courts of Criminal Jurisdiction in the Province of Quebec.

Whereas it is expedient that public Officers should be established in the several Parishes of this Province, under the Denomination of Peace Officers ; It is Enacted and Ordained, by his Excellency the Governor and the Legislative Council, That all and every the Captains, and other Officers of Militia in the said several Parishes of this Province, duly commissioned by His Excellency the Governor, or the Commander in Chief for the Time being, and likewise the Serjeants named and appointed by the said Captains and other Officers in the respective Parishes, be, and they are hereby declared to be Public and Peace Officers within their respective Parishes, and authorized and enjoined to do and exercise all and singular the Duties and Services of Public and Peace Officers within their respective Parishes according to Law.

Peace Officers appointed in the Country Parishes.

And be it further Enacted by the same Authority, That it shall be Lawful for the Commissioners, or Justices of the Peace, assembled in Quarter Sessions, or by a Majority of the same, and they are hereby required, as soon as conveniently may be, to name and appoint such and so many Persons as they may think sufficient, within the Towns and Banlieus of Quebec and Montreal, for carrying into Execution the orders and Decrees of the several Courts, and to preserve the Public Peace therein, every of which Persons so appointed shall faithfully perform the Duties of the Offices for which he may be so appointed for the space of one year ; previous to the expiration whereof it shall be the Duty of the said Commissioners or Justices of the Peace annually to appoint others to serve in their stead, and to increase or diminish the number first appointed, as to them shall appear to be most for the Public Weal and Safety ; and that no such appointment shall be valid in Quebec or Montreal, and their Banlieus respectively, in the Case of a Civil or Military Officer, or in any Person in Priest's Orders, or in the Profession or Practice of Physic or Surgery, or any Miller, Ferryman, Schoolmaster, or Student of any College or Seminary, or any Person not of full

The same to be appointed for the Towns.

[1] Canadian Archives, Q 62A-2, p. 644. See also Ordinances of Quebec, 1763-91, p. 194. This Ordinance is an amendment of 17 Geo. III, cap. 5, given at p. 690.

age: and for neglecting or refusing to perform the said Office or Offices there shall be the Forfeiture of Twenty Pounds, to be recovered in any Court of Record, with Costs of Suit, by Bill, Plaint, or Information, in which no Essoign, Wager, of Law, or any more than One Imparlance, shall be allowed.

(signed) DORCHESTER

Enacted and Ordained by the Authority aforesaid and passed in Council under the Public Seal of the Province, at the Council Chamber, in the Castle of S$^{t}$ Louis in the City of Quebec, the 30$^{th}$ day of April, in the Twenty seventh year of the Reign of our Sovereign Lord George the Third, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith and so forth, and in the Year of our Lord 1787.

By His Excellency's Command

(signed) J : WILLIAMS

C.L.C.

## SYDNEY TO DORCHESTER.[1]

*Private.* WHITEHALL 20$^{th}$ Sept$^{r}$ 1787.

Right Honb$^{le}$

Lord Dorchester.

MY DEAR LORD,

I think it necessary to accompany my Public Dispatch with a few Lines of a more private and confidential kind.

The Subjects contained in your various Dispatches are of very important and interesting natures. The Merchants who trade to Quebec naturally take part with their British Correspondents. But in the few Conversations I have had with them, they have restricted their Complaints almost entirely to the want of Goals and Officers to secure their Debtors, hinting, however, that they would wish to have the English Commercial Laws prevail instead of the *Coûtume de Paris*. I am clear that the Canadians have a right to retain, if they choose it, the Laws guaranteed to them by the Capitulation, and that Merchants who trade with them ought to content themselves with the Laws of that Country, as well as with those of every other with which they deal.

The Disputes in the Legislative Council are extremely disgusting, not to say disgraceful, to the Government.

[1] Canadian Archives, Q 28, p. 44. In another despatch, dated Sept. 14th, Lord Sydney discussed in an official form the points here touched upon in a more confidential manner. Dorchester is informed that, though it is not the intention at present to change the constitution of the Province, yet His Majesty will be advised to make a change in the tenure of land in the Province. See Q 28, p. 28.

Protests are of ancient Use in the House of Lords, but I do not see with what propriety they are introduced into the Legislative Council of Quebec. The Protest of M^r^ Pownall against the excluding Strangers,[1] seems to me a very extraordinary Proceeding, and that in which the Speech of the Chief Justice of the Common Pleas is censured, is a direct attack upon the freedom of Debate, and in that instance unprecedented, I believe, by any proceeding of any Assembly whatever.

Some means must be found of preventing this kind of animosity and personality between the King's Servants in the Province, as it is impossible for any Government to subsist under such Circumstances.

The Behaviour of the Attorney General towards the Judges of the Common Pleas, seems to have been extremely improper, even if they deserved the imputations which he so unsparingly cast upon them, but if in the Event he cannot make good his charge, he must certainly appear very unfit to continue in his Office.[2]

All the Disputes seem to tend to a Division of the Province into two, with a Lieutenant Gov^r^ to each, under the Governor, I wish your Lordship had given me your thoughts upon that Subject, as well as upon any other plan of adjusting the differences subsisting in the Province, and unfortunately among the Officers of the Crown : You must be better able to form a decisive opinion upon the spot than We can here, and your long experience and general knowledge of the Province would give the greatest weight to your opinion.

The Rights and the opinions of the antient Inhabitants of Canada, must be attended to in every thing like a change of the Government, otherwise under the shew of giving a free Constitution, We are really practising Tyranny.

Your Lordship will see by my official Dispatch,[3] that the King's Servants have no immediate Thoughts of proposing any alterations in the Quebec Act. No Plan of an Assembly has been suggested by any one, and indeed it would, under the present Circumstances, be very difficult to form

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[1] At a session of the Legislative Council Jan. 22nd, some sixteen citizens presented a petition requesting permission to attend the debates of the Council, when Col. Caldwell moved "that every Member of the Council shall have leave to introduce any Gentlemen to hear the Debates at any time, except when the House is ordered to be cleared." This motion however, was defeated by ten to eight, all the French members voting against it. On Jan. 25th, Mr. Pownall recorded his protest, his reasons being that every British subject had a right, upon due application, to hear the debates of the Legislature which passed the laws governing him. He pointed out also that the idea which had prevailed previously, (See note 1, p. 780) that the members were bound by their oath to debate all measures in secret, was no longer held, and also that it is necessary to dissipate the suspicion with which their secret proceedings were regarded by the general public. Journals of the Leg. Council, Vol. E, pp. 2 and 4. See also Q 27-2, pp. 564 & 570.

[2] This refers to the famous arraignment by the Attorney General, James Monk, of the administration of justice in the Canadian Courts of Common Pleas. This criticism was made in the course of an address before the Legislative Council, on April 14th, 1787, when Mr. Monk was acting as counsel for the Canadian merchants, in support of their petition on behalf of themselves and other merchants in Britain, against a proposed ordinance introduced by Mr. St. Ours, to regulate proceedings in the courts, after that of the Chief Justice had been voted down. Journals of the Leg. Council, Vol. E. p. 78. The address is not given in the minutes. Mr. Monk's statements were taken up in the Council and the proceedings eventually resulted in a very extensive investigation before the Chief Justice, the minutes of which fill 13 volumes in the Canadian Archives; Q 29-1 to Q 34-2.

[3] Referred to in note 1, p. 863.

such a one as would not be liable to very great objection. But I foresee, as well as your Lordship, that in proportion as the number of British and Loyalists increases in the Province, the applications for one will grow more frequent and pressing.

I am, my dear Lord with great truth and regard,
Your Lordship's most obed[t] humble Serv[t]
SYDNEY.

## DORCHESTER TO SYDNEY.[2]

Quebec 13 June 1787.

My Lord,

I transmit herewith The Minutes of Council upon State
A business from the 24[th] October 1786 to the 2 June 1787 both inclusive.

B The Report of a Committee of Council relating to the Courts of Justice.

C The Report of a Committee of Council relating to Commerce and Police.

D The Report of a Committee of Council upon Population, Agriculture, and the Settlement of the Crown Lands.

E The Journals serving for a Report of the Committee of Council for the Militia and the high roads and Communications.

F The Journals of the Legislative Council.

G A set of printed Copies of twelve Ordinances passed during the last Cession of the Legislative Council.

H Copy of a letter from the Lieutenant Governor, dated 10[th] March 1787.

I Copy of a letter from the Lieutenant Governor, dated 1[st] May 1787.

K Copies of Papers concerning a Grand Jury of Montreal.

The great bulk of the Minutes of the Legislative Council was occasioned by a considerable warmth and much altercation, which prevailed among the members from their meeting ; very nearly to the end of the Session, when they became more com-

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[2] Canadian Archives, Q 27-1, p. 112. (*a*) On 4[th] July, Dorchester sent another copy of this despatch to Lord Hawkesbury, who had succeeded Lord Sydney as President of the reorganized Committee of the Privy Council for Trade and Foreign Plantations. See C.O. 42, Vol. 11, p. 2. The capital letters in the margin refer to the reports and proceedings embodying the investigation of the existing condition of the Province which Dorchester was required to make on returning to Canada. See note 2, p. 520. Those portions of the reports, &c., bearing on the constitutional changes which were being advocated, are given among the documents which follow, and need not be specially referred to here. They will all be found in vols. Q 27-1 and 27-2. (*b*) The original form of B to F inclusive will be found in Journals of the Leg. Council, Vol. E. pp. 1-332.

posed, and separated in tolerable good humour, with each other at least in appearance.

Two parties have subsisted in this province ever since the Civil Law was introduced here in 'Sixty four, the one zealous for English Laws and for an Assembly, the other not less anxious to maintain the present form of Government with the Ancient laws, customs and usages of the Country.

It unfortunately happened that the Quebec bill, which gave entire satisfaction to the latter, took place at a time, when the Province was too much disturbed by the late rebellion to think of anything further than self defence, and immediate preservation; and it was no small addition to this misfortune, that the province has been left so many years without a law Officer of the Crown, to Assist in regulating the Courts of Justice, and in introducing such laws and practice, as might have given satisfaction to the former without infringing on the rights of the latter ; for which reason the Ordinance for regulating the proceedings in the Courts of Civil Judicature has been temporary, and re-inacted from time to time with Alterations. The last enacted in eighty five[1] for two Years, of course was to be renewed this session, and on this occasion both parties were attentive and anxious to obtain as much of their favourite System as possible ; a bill brought in by the Chief Justice[2] for this purpose was rejected, as were most of the bills brought in by him, the Majority alledging they were calculated to introduce too much novelty into the province ; a bill on more Canadian principles was brought in;[3] these proceedings occasioned a protest of some sharpness from the minority;[4] the Merchants petitioned the Legislative Council to be heard against that bill, then under Consideration of a Committee of the whole council, which was agreed to;[5] the Attorney General, who was employed on that occasion, in his Speech against the bill, accused the Court of Appeals of inconsistency in their decisions, and still more strongly the Judges of the Common Pleas, adding that these were influenced by caprice and humour, and that some of them had granted by favor to one what they had refused to another.[6]

F
26th March.

F
26th February H. I. The Dissent of the 26th February and the Protest already mentioned occasioned the two letters from the Lieutenant

[1] Given at p. 780.

[2] Given at p. 847.

[3] This bill was introduced by Mr. St. Ours, on Feb. 22nd, 1787. See note 1, p. 858.

[4] This protest, given at p. 855, was entered on the journals of the Council of March 26th. See note 2, p. 854.

[5] See journals of the Council, April 7th and 10th, Vol. E, pp. 74, 75. See also Q 27-2, pp. 694 and 696.

[6] The Attorney General delivered his address on April 14th. See note 2, p. 864.

SESSIONAL PAPER No. 18

F
27th April
A
page 3

Governor,[1] and Mr Monk's speech occasioned the Address from the Legislative Council,[2] and the petition from the Judges of the Common Pleas then present in Quebec for an inquiry into these charges.[3]

The Chief Justice has accordingly been directed to investigate this matter, as it was not thought adviseable to add any part of the Council, since they were in some Measure involved in the Accusation.

The bill under deliberation[4] was rejected, and the temporary bill ready to expire was re-enacted for two years with many additions,[5] which for the present has satisfied most of the opposite party both within the Council and without, so that there seemed a general disposition to rescind the protest, which had given much offence, and was carried into execution by two of the Members,[6] but failed after a consultation for that purpose, with the rest.

Your Lordship will perceive by the minutes of Council that soon after my arrival the members were divided into Committees[7] for the purpose of making themselves intimately acquainted with the affairs and interests of the province, and for bringing this knowledge forward and into the Legislative Council. Their reports have accordingly brought forward a great deal of useful information, to which I may have occasion to refer in some of my letters hereafter; but some of the Merchants of Quebec, who were consulted on the business of commerce and police took occasion from thence to enter deeply into law and politicks,[8] recommended that a large portion of the common and statute law of England should be adopted in this Province, and referred to the petition sent two years ago to the King and both Houses of Parliament for an Assembly.[9]

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[1] On Jan. 23rd the Chief Justice, seconded by Mr. Finlay, brought in a bill "to secure the Royal Revenues and to regulate the Proceedings in Crown Causes, and to give the Subject the benefit of Appeal from large fines." This was intended to provide, through the Court of King's Bench, for the functions of an Exchequer Court, in a less expensive form. When this bill came up in committee, the French section of the council, with whom Messrs. Mabane, Fraser, and Hope invariably acted on all party questions, so completely altered it, including the title, that Messrs, Finlay, Grant, Collins, Caldwell, Holland, and Sir John Johnson entered upon the journals their reasons of dissent. See Journals of the Leg. Council, Vol. E, pp. 1-33. See also Q 27-2, pp. 617-620. This brought out a long letter from Lt.-Gov. Hope to Lord Dorchester, for the purpose of justifying his attitude towards the bill. This is given in section H. See Q 27-2, p. 917. The second letter from the Lt. Gov. was in justification of his action in assisting to defeat the bill of the Chief Justice, for regulating the proceedings in the Civil Courts, and is given in section I. See Q 27-2, p. 931.

[2] Given in the journals of the Council, Vol. E, p. 85-88. See also Q 27-2, p. 768.

[3] See minutes of Council which follow this document, p. 873.

[4] The bill introduced by St. Ours. See note 3, p. 866.

[5] Given at p. 858.

[6] Referring to the action of Messrs. Holland and Harrison in withdrawing their names from the protest of dissent. See note 2, p. 857.

[7] See below, p. 871.

[8] In so far as these deal with matters affecting the constitution of the Province, they are given among the documents which follow, under section C. See p. 899.

[9] See p. 742.

The Canadians were very much alarmed and offended that these Gentlemen should take upon themselves to desire that numberless unknown customs and laws should be introduced, and their old customs and laws abrogated in that summary
F
1 Febʸ. manner. All the respectable Canadians of the town and neighbourhood presented a Petition[1] expressing their apprehensions upon this occasion. This business was carried on pretty nearly in the same manner at Montreal, and was followed by a petition much to the same purpose;[2] but it did not end quite so soon at
F
12 Febʸ. Montreal; reports were put about, that unfair means had been used to procure signatures to this petition, and the grand jury sent for several, by a *huissier*, and examined them concerning their signing the petition ; the numbers brought in this manner before the grand jury gave the more offence, as it so happened, that the foreman and some of the jurymen were the persons, against whose opinions and recommendations the petitions had been made, and as it did not appear that the smallest irregularity had been found out, some murmurings followed and increased with the numbers examined ; at length a Mʳ Franchese speaking very freely and censuring the proceedings of the grand jury was prosecuted for this conduct by the Attorney General, and
K
condemned to pay a fine of fifteen pounds.[3] Much interest has been used to have this fine remitted, but as I am convinced many evils might arise from remitting punishments, unless recommended by the Magistrate, who pronounced sentence, I have agreeable to that maxim told them the application for pardon must come through the Chief Justice.

I have been the more full on these Matters, as they will shew Your Lordship the opinions of both parties here on the laws and form of government.

I am with much respect and esteem
Your Lordship's Most obedient, and
Most humble Servant.
DORCHESTER

Right Honbˡᵉ
Lord Sydney
&ᶜ. &ᶜ. &ᶜ.

[1] This petition was presented on Feb. 1st. See Journals of the Leg. Council, Vol. E, p. 6; See also Q, 27-1, p. 315.

[2] This petition was presented on Feb. 12th. See Journals of the Leg. Council, Vol. E, p. 16; See also Q 27-1, p. 410.

[3] The papers relating to this affair are given in section K in Q 27-2, p. 941.

SESSIONAL PAPER No. 18

# QUEBEC.—COPY OF THE MINUTES OF COUNCIL UPON STATE BUSINESS FROM 24th OF OCTOBER 1786 TO THE 2nd OF JUNE 1787.[1]

Thursday 2nd November 1786

At the Council Chamber in The Bishop's Palace

Present

His Excellency
The Right Honourable Guy Lord Dorchester.
The Honble Henry Hope Esquire, Lieutenant Governor
Willm Smith Esqr C.J.

| | |
|---|---|
| Edward Harrison | John Collins |
| Adam Mabane | George Pownall |
| J. G. C. De Lery | Picottée de Bellestre |
| John Fraser | Henry Caldwell |
| William Grant | Paul Roc St. Ours |
| Francis Baby | Joseph De Longueüil |
| Samuel Holland. | . . . Esquires |

His Honor the Lieutenant Governor, William Smith Esqr the Chief Justice, and Edward Harrison, John Collins, Adam Mabane, George Pownall, John Fraser, Henry Caldwell, Willm Grant and Samuel Holland Esquires, took & subscribed The State Oaths, and made and subscribed the Declaration against Transubstantiation—

And Joseph Gaspard Chausegros De Lery, Paul Rock St Ours, Francis Baby, and Joseph De Longueüil Esquires took and subscribed the Oath required by the Act of the fourteenth of His present Majesty. chap. 83.[2]— Then the Oath of Privy Counsellor was administered to them respectively, and they took their Seats.

The Oath directed by the Statute of the 18th of Edwd the 3d Stat. 4. was administered to the Honble William Smith Esqre as Chief Justice for this province.

His Excellency intimated to The Council that He would have certain subjects to commit to their consideration at their next sitting.

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[1] Canadian Archives, Minutes of Privy Council, Quebec, Vol. D, p. 286. See also Q 27-1, p. 120. These minutes constitute section A referred to in the foregoing despatch of Dorchester to Sydney. These are minutes of the executive sessions of the Council and differ from the record of the proceedings of the Council as a legislative body, which is given in the journals of the Legislative Council which constitute section F. Only those portions of the minutes are here reproduced which have a more or less direct bearing upon constitutional questions. The greater part of the minutes is taken up with commercial matters, government expenditure, petitions for land, &c.

[2] Being the special oath prescribed in the Quebec Act. See p. 572.

Monday 6th November 1786

At The Council Chamber in The Bishop's Palace

Present

His Excellency The Right Honourable Guy Lord Dorchester
The Honble Henry Hope Esquire Lieutenant Governor
William Smith, Chief Justice

| | |
|---|---|
| Hugh Finlay | Edward Harrison |
| John Collins | Adam Mabane |
| George Pownall | J. G. C. De Lery |
| Picottée de Bellestre | John Fraser |
| Henry Caldwell | William Grant |
| Paul Rock St. Ours | Francis Baby |
| Joseph De Longueüil | Samuel Holland |

Esquires

The State Oaths were taken and subscribed by the Honble Hugh Finlay Esqr and Sir John Johnson Baronet, and they made and subscribed The Declaration against Transubstantiation. The Oath required to be taken by persons professing the Religion of the Church of Rome, by the Statute of the 14th of His present Majesty ch. 83, was taken and subscribed by The Honble René Amable Boucherville and Le Conte Dupré Esquires.

They all took the Oath of a Privy Councillor, and afterwards their respective seats at the Board.

At the Board, in addition to the above Members,

Sir John Johnson Baronet
René Amable Boucherville and Le Conte Dupré } Esquires.

His Excellency Lord Dorchester, agreeably to the Intimation He gave at the last sitting of The Council, was now pleased to recommend to the Board the taking into consideration, the following Subjects,[1] viz,

1st—Courts of Justice
2ndly—The Militia; The High-roads and Communications
3rdly—Population and Agriculture; and the Settlement of The King's Lands. And
4thly—The external and internal Commerce; and the Regulation of the Police.

[1] The investigations to be undertaken were to furnish that information which the Home Government desired to obtain before determining upon the future government of the Province. See note 2 p. 767.

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His Lordship expressed an earnest desire that the Members composing the several Committees, now to be named, would give particular attention to the objects recommended to their consideration, having an Eye to the antient laws and usages of the province.

Then His Lordship appointed The Committees.

1st—For Courts of Justice—
The Chief Justice, Pr
Mr Finlay
Mr Dunn
Mr Mabane
Mr Fraser
Mr St Ours

2nd For the Militia; The High-roads and Communications
The Lieutenant Governor Pr
Mr Bellestre
Col. Caldwell
Mr Baby
Mr La Naudiere
Mr Dupré

3rd Upon Population & Agriculture ; and the Settlement of The King's Lands.
Mr De Lery Pr
Mr De Longueüil
Mr Holland
Mr Davison
Sir John Johnson Bt
Mr Boucherville

4th For the external and internal Commerce; and the regulation of the Police
Mr Levesque Pr
Mr Harrison
Mr Collins
Mr Grant
Mr Pownall

The Committee are empowered to send for and examine Persons, Records and Papers ; and they are to bring in their several Reports to His Excellency with as much dispatch as they shall find convenient.

It pleased His Lordship to communicate to The Board that He intended to assemble The Legislative Council on Monday the 15th of January.[1]

[1] It was provided by the Quebec Act, and enforced in the ninth article of the Governor's Instructions, that, except under very special circumstances, the Council should meet for legislative purposes, only during the first four months of the year.

Friday 18th May 1787

Present

His Excellency The Right Honourable Guy Lord Dorchester Governor,
The Honble Henry Hope Esquire Lieut Governor.
William Smith Chief Justice

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|---|---|
| Hugh Finlay | Edward Harrison |
| John Collins | Adam Mabane |
| George Pownall | J. G. C. DeLery |
| William Grant | Paul Roc de St Ours |
| Francis Baby | Samuel Holland |

and

Le Comte Dupré—.....Esquires

His Excellency was pleased to refer all the public provincial accounts for the last Six months to the Examination of The Chief Justice, Mr Harrison, Mr Mabane, Mr Grant and Mr Baby and any other Members attending shall have a Voice; to be reported with all convenient speed.

Read a Memorial of Mr Judge Mabane, Mr Judge Fraser and Mr Judge Panet, to His Excellency dated the 1st instant, stating among other things that an accusation of partiality was made before the Legislative Council, on the 14th of April last, against The Judges of the Court of Common Pleas at Quebec by James Monk Esquire His Majesty's Attorney General;[1] and "praying His Lordship to do them Justice, by vindicating "the dignity of Government thus wantonly insulted in their persons by The "King's Attorney General, and thereby rescue their Characters and Repu- "tation from an Attack of partiality, so maliciously and publickly brought "against them, and unsupported, which may also upon the slightest inquiry "be proved to be altogether without foundation, and which is altogether "unconnected with any farther inquiry or investigation His Lordship may "think proper to make into the Charges of Inconsistency in the Judicial "Decisions of the Courts of Justice, alledged to arise from the inadequateness "and uncertainty of the Laws."

Here Mr Judge Mabane withdrew. Then, Read the Address of the Legislative Council to His Lordship, dated the 27th of April "requesting "His Lordship, upon the reasons and grounds therein referred to, to take "such steps as in his wisdom He should judge best calculated to promote "the Ends of public Justice, and to vindicate the Honour of Government, "which are both so essentially interested in an enquiry into the Charges "and Accusations so publickly brought before The Legislative Council, "against the past administration of Justice in the Court of Common Pleas "for the two districts, as well as against the Judges of the same; and that "of Inconsistency in some of the Judgments of the Court of Appeals."[2]

[1] See note 2, p. 864.
[2] See Journals of Leg. Council, Vol. E, p. 88.

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Read also the Extract from the Journals of The Legislative Council, and the Papers *A* and *B* which accompanied the Address. WHEREUPON it is ORDERED by His Excellency with the Advice of the Council that it be committed to The Chief Justice to cause the Investigation desired to be made, by hearing the parties publickly in the Council Chamber, and that the Report be made to His Lordship with all convenient Speed; and first upon the Question of partiality. And the Chief Justice is authorised to employ one or more Clerks in the Service aforesaid, with free Access to Records and Papers.

## MEMORIAL OF THE JUDGES.[1]

To His Excellency The Right Honorable Guy Lord Dorchester Captain General and Governor in chief of the Colonies of Quebec Nova Scotia & New Brunswick— &c. &c. &c.

The Memorial of the undersigned Judges of His Majesty's Courts of Common Pleas for the District of Quebec and Montreal.

Sheweth.

That on the 14th of April last, James Monk Esquire His Majesty's Attorney General for this province, on being heard as Council at the bar of the Honble The Legislative Council upon a Petition of some of the Citizens of Quebec, and others, relative to an Ordinance for regulating the proceedings of the Courts of Justice, then before a Committee of the whole Council, did, in a Speech of considerable length, deliver'd in presence of a Crowded audience, enter into a general field of declamation against the Laws and Administration of justice for this Province, charging not only the Courts of Common Pleas for both Districts, but the Provincial Court of Appeals, and even the Lords of His Majesty's Council with inconsistency in their judicial decisions ; and also charging the Judges of the Court of Common Pleas for the District of Quebec with partiality in having, through grace and favor granted to John Fraser of London Merchant, what they afterwards denied to William Goodall of the House of Watson and Rashleigh in a Case of a similar nature ; which last imputation is of the most serious nature and consequence to your Memorialists affected thereby, and to government.

That when the Attorney General was call'd upon to avow and support what he had advanced in this behalf, and specially required so to do by the Legislative Council, as well as generally, by an Honorable Member Mr. Caldwell, to bring forward any accusation whatever of partiality, other than that stated in the Questions put to him by the Council ; he the said Attorney General Did, in place of answering directly to so plain a question, evade the same under pretext of consulting his Clients, as may appear by his answer of record, and having taken time, full six days to prepare himself

[1] See Q 27-1, p. 135.

to satisfy the Council in this respect, in place of coming forward to support so foul an Accusation, Did, at the moment of the last adjournment of the Council to wait on Your Lordship at the close of the Session, present an answer for himself and his Clients equally evasive, for all which your Memorialists beg leave to refer your Lordship to the Journals of Council and to the last Answer abovementioned.[1]

Your Memorialists therefore humbly pray Your Lordship to do them Justice, by vindicating the dignity of Government, thus wantonly insulted in their persons by the King's Attorney General, and thereby rescue their Characters and reputation from an attack of partiality so maliciously and publickly brought against them and unsupported, which may also, upon the slightest inquiry be proved to be altogether without foundation,—and which is altogether unconnected with any farther inquiry or investigation Your Lordship may think proper to make into the Charges of inconsistency in the Judicial decisions of the Courts of Justice Alledged to arise from the inadequateness and uncertainty of the Laws.[2]

Quebec 1st May 1787.

(signed) A. MABANE, J.C.P. for Quebec
J. FRASER, J.C.P.
Pre PANET, J.C.P.

## REPORT OF THE COMMITTEE OF THE COUNCIL RELATING TO THE COURTS OF JUSTICE.[3]

To His Excellency the Right Honorable Lord Dorchester, Governor in Chief of the Province of Quebec, &c, &c, &c.

The Report of the Committee of the Council relating to the Courts of Justice.

May it please your Lordship,

The Committee from the indefinite reference of the general subject of the Courts of Justice to their consideration, apprehend that it is Your Lordship's wise and benevolent intention to bring the present Jurisprudence of the Colony into view, for the purpose of such Emendations as the public welfare may require, and to that end they proceed.

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[1] For Monk's statement, see Journals of the Leg. Council, Vol. E, p. 88. See also Q 27-2 p. 776.

[2] As stated in Dorchester's letter to Sydney, see p. 867, the Chief Justice was appointed to investigate the matter. The record of the investigation fills 13 volumes, Q 29-1 to Q 34-2, and brings out most abundantly the very confused, inconsistent, and arbitrary system of justice administered under the Quebec Act, but without establishing any wilful corruption on the part of the judges, who were simply the victims of the system.

[3] Canadian Archives, Journals of the Leg. Council, Vol. E, p. 125. See also Q 27-1, p. 185. This is section B referred to in Dorchester to Sydney, see p. 865. This report was made before the investigation due to the charges of Atty. Gen. Monk was undertaken. The committee appointed to report upon the Courts of Justice consisted of the Chief Justice, and Messrs. Finlay, Dunn, Mabane, Fraser, and St. Ours. As will be observed however most of the work was done by Messrs. Finlay, Mabane and St. Ours. The notes 1 to 9 were placed at the foot of the pages, in the original MSS. but to avoid confusion they are here given at the end of each section.

First, to State what Courts there are for the administration of Justice, and then

Secondly to subjoin the observations occurring to them, as most deserving of Your Lordship's Attention.

There are Courts for Criminal, and Courts for civil Jurisdiction.

Two Ordinances of this Province for instituting these Courts were passed in 1777,[1] and another in 1785[2] for regulating the Civil Judicature under the authority of the Statute of 1774 commonly called the Quebec Act,

That Ordinance which relates to the Criminal Jurisdiction[3] erects Ist A Court of Kings Bench for the Cognizance of all pleas of the Crown ; and for the trial of all manner of offences whatsoever; to be held before The Chief Justice (*or Commissioners that may be appointed for Executing the Office of Chief Justice for the time being*) who shall hear & determine the said pleas of the Crown, and all manner of offences whatsoever according to the Laws of England, and the Ordinances of the Governor and Legislative Council of the Province.

IIly Courts of General Quarter Sessions of the peace in each of the two Districts of Quebec and Montreal by so many Commissioners of each District, as are or shall be limited in the Commission of the Peace, who are to hear and determine all matters relative to the conservation of the peace, and whatsoever is by them cognizable according to the Laws of England, and the Ordinances of the Governor and Legislative Council of the Province.

The two Districts of Quebec & Montreal comprehend the whole Province, and are divided by the River Godfroy falling into the St Lawrence from the South, and the St Maurice from the North; so that the Eastern district is Quebec, and the Western Montreal: Each District has a Sheriff and a Coroner. Special Commissions of Oyer and Terminer may issue for either; and the same Act provides

Ist That the Captains of the Militia may arrest any person "guilty of any "breach of the peace, or any Criminal offence within their respective "parishes, and convey or cause to be conveyed such person, before the nearest "Commissioner of the Peace, to be dealt with according to Law"(1)

(1) That this be a part of the Report, For it Mr Finlay
Agst it Mr Mabane Mr St. Ours

IIly That the Captains of Militia *may*, when any marks of violence appear upon the dead body summon together six reputable Householders of his Parish to inspect the same; and he shall according to their opinion report the manner and cause of such death in writing to the nearest Commissioner of the peace that a farther Examination may be made therein if necessary.

No other law has been passed in the Colony so to organize it, as to give effect and operation to that part of the Statute, by which the Criminal

[1] See pp. 679 & 690.
[2] See p. 780.
[3] See p. 690.

Laws of England were introduced, as the Law of the province relating to Crimes and offences.

Under the two Ordinances respecting the dispensation of Justice in *Civil* causes, the Courts are,

I$^{st}$ A Court for small causes of ten pounds sterling & under.

II$^{d}$ A Court for Causes exceeding that sum.

III$^{d}$ Courts to hear Causes in Appeal.

For Your Lordship's clearer discernment of the nature of these Judicatures the Committee beg leave to present an Abstract of what appears to be most material in the Ordinances with respect to *each* of these Judicatures and

I$^{st}$ As to the Court for small causes—

The Cognizance is committed to either of the Judges of the King's Court of *Common pleas*. His decisions are final, and the rule *Equity and good Conscience*, as often as Judgement is given by the default of Appearance. In other cases the practice has been to determine by the *Law in general*, as it was understood by the Judge to apply to the case.

The Court is held weekly. The process is a Declaration and summons —The return day *as the Judge directs*—The proceedings are summary—Costs follow the Judgement—The Execution runs against the moveables unless screen'd by the fraud of violence of the defendant and then against his person—It is to be executed by such person as the *Judge nominates*, and the sum may be levied by installments, but all to run out within *three* Months.

Confined to no place, the Judges alternately itinerate with their Clerk, twice yearly to the remoter settlements within the bounds of their respective Districts.

II$^{ly}$ And in all causes above Ten Pounds *two* of the *three* Judges for each district are required.

This is the great Court of the Country with original Jurisdiction; it has by the Ordinance

"Full power Jurisdiction & Authority to hear and determine, all "matters of controversy relative to property and civil rights"—

It sits weekly in each District; it may find *fact and Law*, but either party has the right in *certain* cases of electing a trial by Jury, and the formulary of practice is the course *two-fold.*

The first process is a declaration & summons, returnable at a day a *Judge directs.* It goes to the Sheriff of the District On default of appearance at the two next successive Court days there is an Interlocutory Judgement—There is no Jury of enquiry, the Court assesses the damages, and gives the final Judgement; an execution follows, but in that case the Plaintiff gives security to refund, if by the reconsideration of the *same Court* that Judgement shall be reversed; as it may be where the Defendant being an

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Inhabitant of certain remote distances, viz$^{t}$ ("beyond the Long Sault on "Ottawa River, or beyond Oswegatchie[1] in the upper parts of the Province, "or in or upon any place below Cape Cat on the South side, and the seven "Islands on the North side of the River S$^{t}$ Lawrence") *had not been personally summoned*

Where there is proof of the defendant's intention to leave the Country, the first process may be a *Capias* and require bail.

An issue may be raised *Ore tenus* the Ordinance has the words on that subject,

"That every issue in law or fact, to be formed in any cause, shall be "made & compleated by the declaration, answer and replication, or by the "plea answer and replication in Cases of abatement and bar of the said "parties, Plaintiff and Defendant; and that no other or further pleadings "or writings by way of plea upon such issue or matter in Dispute, whether "of Law or Fact, shall be received or admitted by the said Courts of Com- "mon pleas, as part of and to be put upon the record, in any case there insti- "tuted and to be heard and adjudged upon any thing to the contrary "notwithstanding."

The trial by Jury is at the option of either of the Parties, in such suits as are

"Grounded on Debts, Promises, Contracts and Agreements of a *Mercan- "tile nature only* between Merchant and Merchant, and Trader & Trader "so reputed and understood, *according to Law*; and also of personal *wrongs* "proper to be compensated in damages."

The Jurors are to be

"Merchants or Traders of Lawful age, and also all persons of Lawful age "being house-holders or occupying Lodgings of the value of Fifteen pounds "per annum rent"

They are to come from the Vicinages or Banlieus of Quebec or Montreal; the precise limits of which the Committee are not able to ascertain.

The Sheriffs are annually to file two lists in the Clerks office; the first to consist of all *Merchants concerned in Trade*, and the second of persons of other occupations. These lists may be *remodelled* by the Sheriff and Judges, and are to be open to public resort.

In causes of Mercantile dispute or actions of Damage where the total amount sum dealing or matter of account, agreement or transaction between the parties, exceeds Fifty pounds a Jury is to be struck from the *first* list—and from the *second* when the demand is of Fifty pounds and less; and the strikings are to be in rotation, commencing for one cause, where the last ended.

Challenges are to be according to the Law of England; but in causes between Natural born subjects the Jurors are to be natural born, Canadians if the parties are Canadians, and *de medietate*, where they are of different classes.

[1] Ogdensburg, or Prescott on the Canadian side of the St. Lawrence.

The English rules of evidence are to direct "in proof of all Facts con-"cerning *commercial matters.*"

Depositions before a Judge, after notice to the adverse party, are Admissible in the case of a Witness about to leave the Province, or being sick, or not able to attend, and as the Ordinance adds, in cases of evident necessity.

The verdict is compleat, tho' but *nine* Jurors concur.

On the seizure of personality in execution, it shall be published at the Church-door of the Parish, the next following Sunday, notifying the time of sale—That sale is to be within the Parish and the time not within eight days from the seizure.

At the request of the Plaintiff, the goods may be conveyed to and sold at the Capital of the District, and the personal estate is to be sold first.

The sale of the Realty is to be preceded by *three* Gazette advertizements, with an interval of *four* months, verbal and written proclamations at the Church-door of the Parish, and a public call upon all incumbrancers to notify their demands at the *Sheriffs Office.*

The body is liable to Execution when the goods are secreted or the seizure opposed, and to satisfy Judgements to *Merchants* and *Traders.* But upon Oath of the imprisoned debtor after a months confinement, swearing himself not worth Ten pounds, he is to have three shillings & sixpence a week for his sustenance from the Creditor, with a further augmentation to one shilling and sixpence more by the *discretion of the Judges*, unless the Plaintiff proves a concealment of substraction of effects for the purpose of fraud.

And Creditors have the advantage of carrying the process of execution from one District to the other. The

III$^{d}$ Civil Judicature is the Provincial Court of Appeals,

It is constituted by any five Members of the Council with either the Governor, Lieutenant Governor, or the Chief Justice.

It has no *original* jurisdiction but only the hearing and determining appeals in causes under ten pounds, where it relates to a duty to the Crown, a fee of office or annual rent, or where a future right is to be bound *and in all cases above ten pounds.*

But the Judgement below is final, and the right to appeal suspended, upon the Appellant's giving security to prosecute the appeal and pay the costs and damages, in case the first Judgement be affirmed.

It admits of a Question whether the Jurisdiction of the Court of Appeal is not made to depend on the giving such security: the security is left to the Judgement of the Court below.

From the Provincial Court of Appeals, the dernier resort is to the King in privy Council, but only in such cases under ten pounds as might come to the Provincial Court of Appeals, and in those above five hundred pounds sterling.

The only remaining Court in the actual execution of authority, is
The Prerogative Court; one in each of the two districts.

The Judges are constituted by Commission under the Province seal, and are the *very same persons*, that now sit on the Bench of the Common Pleas.

Their Commissions give them power to take the Probate of Wills, relating to *real* and personal Estates, and issue letters of Administration, prove Inventories & Accounts, "and to transact whatever may be legal "and right for the just execution of all Wills and Codicils, and touching "estates, Lands Tenements, Goods, Chattels, Rights, Credits and Effects "of all any and every Intestate; and to divide, apportion, appropriate and "decree the same, to such persons, and in such manner, as by Law it is "permitted and directed to be done"

The Question implied by Your Lordship's reference requiring, not only an enumeration of the Courts, and an analysis of their powers, but what may appear to be expedient for the advancement of Justice, the Committee proceed next *to that* part of their report.

They are very sensible of the weight of that care and circumspection, which His Majesty recommends, for the Establishment of the proper mode of administring civil and Criminal justice, in a Province so peculiarly circumstanced.

The Committee therefore mean as most likely to answer Your Lordship's intention, *barely* to point at *the most palpable defects* in its present Judicature. And beginning with that Branch which more immediately concerns the Crown, further provision seems to be wanting.

I$^{st}$ To introduce the subordinate & necessary Peace Officers known in the English Law, as Bailifs and Constables.

*There are no Constables in the Province*, and the Captains of the Militia are meer Volunteers, from whom no service can be exacted as a duty.(2)

(2) On this Clause, For its standing M$^{r}$ Finlay. Against it, M$^{r}$ Mabane & M$^{r}$ S$^{t}$ Ours, who offered in its place the following suggestion.

"Mess$^{rs}$ Mabane and S$^{t}$ Ours think the clause should run thus; there "are no peace Officers in the Parishes of the Province as are known in the "English Law, by the name of Bailifs or Constables, the Captains of Militia "being by the Ordinance authorised to act as such without an obligation "enjoined on them to do the duty."

II$^{ly}$ Suitable Justice Halls and prisons—The latter both at Quebec and Montréal being in a condition neither consistent with humanity to the prisoners nor safety to the Sheriffs or the Public, and having been *repeatedly* presented as insufficient by the Grand Juries of both Districts.

III$^{ly}$ As the Law stands there is great danger of a Defect of Public Justice in the difficulty of obtaining free-holders to serve as Grand and Petty Jurors on trials in *Criminal* Cases.

With a freehold estate, a competent knowledge of the English language may be necessary; but very few unite both these qualifications, and yet

there are many Inhabitants very fit for this service who have no Freeholds.(3),
(3) Advanced to this length in the report Mr Mabane insisted on taking in here, what he offers as his motion in the words following, and it was agreed that a Minute be made of it.

"Mr Mabane agreeable to a motion which he made in Council the "6th of last November, and which was withdrawn upon assurance given that "the object of it would be taken into consideration by the Committee "which was to be appointed for the Courts of Justice, finding that in the "Report proposed by the Chairman no notice taken of that important "necessary business, has made out, tho' very sensible of his want of sufficient "abilities the Heads of an Ordinance for promulgating to the people of this "Province the principal parts or articles of the English Law, which he will "subjoin to the Report as soon as it can be copied, for His Lordship's informa- "tion."

IVly The case of the Loyalists from the old Colonies, who to the number of several thousands have seated themselves since the last War in different parts of this Province calls, in the opinion of the Committee, for a very particular attention.

If this Class of the Inhabitants is to be severed from any other District, and erected into seperate Counties, an Act of Legislation will be necessary for that purpose, the partition of the Province into two Districts, standing at present upon a Law, that must for *that purpose be repealed* (4)

(4) On putting the question as to making this Clause a part of the Report

For it Mr Finlay
Agst it Mr Mabane } A substitute to be offer'd
Mr St Ours } next meeting—

The Substitute offered.

Tho' we are sensible that every attention compatible with Law and the good Government of the Province should be given to the Loyalists, we beg leave to observe to your Lordship that by far the greatest part of the Loyalists who took up arms in defence of His Majesty's government during the course of the Rebellion, are already settled in this Colony or those of Nova Scotia New Brunswick and their dependences.

To this class of Men Government is bound by justice and Gratitude to give every protection and assistance. There may be of these meritorious people in this province (their wifes and Children comprehended) about six thousand; of them a great number are Emigrants from North Britain who served in the 84th Regiment, the Provincial Corps of Sir John Johnson, and others; who assuredly cannot be supposed to have any predilection for Laws of which they are totally ignorant. Every precaution was taken to make the Loyalists and others before they were disbanded, acquainted with the conditions upon which the King's Lands were to be granted, and none of them could be ignorant that by fixing their residence in this Province they became subject to the laws of it.

In framing Laws for the Province consideration should certainly be had to the Opinions & Customs of 113000 natives rather than to those of 6000 strangers.

The number of Loyalists settled above Montréal does not appear at present to require a separate District to be erected, tho' that measure may become necessary in a few years; but by that time the state of the upper Countries after the evacuation of the Posts without the limits of the province being known the Legislative Council will be better able to deliberate upon the measure with precision and certainty.

"With regard to the great number of Emigrants from the United States "of America, who we are told, may be expected to resort to this Province "provided the Laws were made agreeable to them, We think it our duty to "observe to Your Lordship, that as these men did not stand forth in defence "of His Majesty's Government they can in general have no claim to its "justice or gratitude; they are discontented with the taxes and other "grievances which abound in the American States, and are therefore willing "to seek an asylum in the British Colonies. It may be policy to admit "them; but for many reasons they should be encouraged to settle in the "Colonies where the laws and form of Government are most agreeable to "their ideas, such as New Brunswick Nova Scotia, the Islands of Cape "Breton and S$^{t}$ Johns: the climate in the latter is temperate, and the "Lands fertile. The insular situation makes it easy for Great Britain to "protect & keep it as a Colony. The Province of Quebec may be con- "sidered in many respects as a frontier to the remaining British Colonies. "Its Inhabitants are numerous, & by Religion, Language Laws & Cus- "toms are the class of men the least likely to coalesce or unite with the "Neighbouring States of America."

"It is most humbly submitted to Your Lordship whether or not sound "policy does not require that they should continue as they are"—

In 1766 when Governor Murray caused a Recensement to be made, the Canadian Men Women and Children amounted to 65000. In 1784 when Governor Haldimand caused another Recensement to be made, their numbers amounted to 113000.

From this state of the Population during the period of 18 years, your Lordship may form an idea how much the Canadians will encrease in 30 years and there will not be wanting men to cultivate the Lands which remain to be conceded, or to carry on the trade of the Colony in all its different branches.

V$^{ly}$ The Committee conceive it to be their duty not to omit the suggestion, that Province remains to this day, without a Court of Exchequer for the regular Estreat of His Majesty's casual Revenue of fines and forfeitures in the other Courts; an object to which it becomes the Legislature to attend not only in *fidelity and gratitude* to the Crown, but *in Justice* to the Colony, the King out of his Royal goodness having applied his whole Revenue Territorial & Casual to the support of the Government of the Province. (5)

(5) On the Question whether this clause stand?

For it—M^r Finlay

Against it—M^r Mabane.

Doubted by M^r S^t Ours

"M^r Mabane offers what follows. "There is certainly no Court of Exchequer "in the Province; but to this day there has been no inconveniency felt from "the want of it—The Sheriff and Clerks of the Court accounting every "six months to the Receiver General for the Casual Revenue—With regard "to the Territorial Revenue if it has not been fully levied, it has not arisen "from any deficiency of Law or authority in the Courts of Common Pleas, "but from the indulgence of Government."

VI^ly The Committee on the other hand cannot avoid the Remark that tho' the present Ordinances enact what the King has been graciously pleased to recommend, Appeals for the security of the property of the subject in *Civil* causes, a clause is still wanting to authorize what His Majesty has enjoined, that Appeals be also allowed even in prosecutions in His Majesty's *own name* for any fine that shall exceed the sum of One Hundred pounds sterling.

And as it is in the *Crown Side* of the King's Bench Court that inferior jurisdictions are kept within the Bounds of their authority, and Magistrates held to their duty by the Writs of *quo warranto* and Mandamus &c, and the liberty of the Subject protected, and it should neither be in the power of a Court, to adjourn nor prolong the Sessions *at pleasure*, it appears to the Committee to be requisite; that its terms and Return days should be fixed and ascertained.

On the Civil Judicature,

the Committee beg leave to observe,

I^st. That it is in their opinion much to be regretted, that the Common Pleas, a Court so respectable as that Tribunal ought to be, to which causes of the highest Consequence are entrusted, holding the right of deciding in the first instance, upon every subject of property in actions Real, Personal, & Mixed, to an indefinite value, should be charged with, and disparaged by a perpetual attention to the petty litigations under the value of ten pounds.

The Remedy seems to be a Law, enabling Your Excellency by a Commission to divide the Province into Precincts or Circles, consisting of two or three contiguous Parishes; and to consign the cognizance of small causes not to Justices of the Peace (who by such mistaken policy, will be drawn aside from their duty in support of the Government & the conservation of the public tranquility) but to two or three Gentlemen of the Precinct or Circle, proceeding summarily, according to good conscience, in a Weekly Court of Requests nearly similar to those lately established in different Districts and Towns in England; and by dispensing justice in a quick cheap and easy manner to a convenient Neighbourhood, relieving the poor, and promoting that industry which *prevents* vice and disorder, and is of the greatest utility to the common weal.

But if *for want of Public Spirit* this measure should not be practicable in the old settled parts of the Province, (which they are not willing to believe) the Committee humbly conceive some such Law, must be indispensibly necessary for the new Districts which as consisting of English Loyalists and being very remote, cannot be left without such Courts for the adjudication of small causes, as well as what they have also been accustomed to, an *inferior Court of Common Pleas* for the trial of actions to Twenty, Thirty or Forty Pounds, according to the course of the Common Law. (6)

The draft of an Ordinance for the trial of small causes is before the Committee.[1]

(6) On the Question whether this clause stand?

For it M^r^ Finlay

M^r^ S^t^ Ours doubts on the Clause

M^r^ Mabane offers the following remarks to be Inserted.

"With regard to the Courts of Common Pleas having been charged "with the determination of small causes begs leave to observe to Your "Lordship that at the Establishment of civil Government in 1764 in order "to prevent the necessity to the Inhabitants repairing from the distant "parts of the District, there was an Ordinance passed Authorizing the "Justices of the peace to take cognizance of debts &c^a^, under the sum of ten "pounds.[2] "Many abuses arose from this institution and in the year 1770 an "Ordinance of the Governor & Council was passed[3] taking away the Juris- "diction from the Justices of the peace, and in order to prevent the Incon- "veniences resulting from the change, required the Judges of the Court of "Common Pleas to make a circuit twice a year in their different Districts for "which they have no allowance of any kind, and established a Weekly Court "in the Towns of Quebec and Montréal where one of them was obliged to be "present, & determine causes under the sum of Ten pounds, and in these "causes very frequently points of Law of great intricacy are involved; but "if any method can be fallen upon to free the Judges of the Common Pleas "from this burthen without detriment to the Public, M^r^ Mabane as one of "them would be very glad of it; but it is with regret that he does not think "the remedy proposed however well intentioned, and however ingenious "applicable to the circumstances of the Province."

II^ly^ If it should be the choice of the Legislature to continue the course of the Court of Common Pleas, in those parts of the Districts that remain, after the new Counties are formed, as it stands at present regulated, by re-enacting the Substance of the Ordinance of 1785, which is nearly expiring, the Committee humbly submit whether (among other amendments) it will not be very necessary so far to alter both Ordinances, as to vest the Provincial Court of Appeals in future, with Authority to adjust the matter of the

[1] This is the draught of an ordinance summarized in Finlay's note to the Bill of the Chief Justice for the better administration of justice &c. See p. 850.

[2] Referring to the Ordinance of Sept. 17th, 1764. See p. 205.

[3] See p. 401.

security to be given by Appellants for staying Execution of the Judgement in the Court below. (7)

(7) On the Question whether this Clause stand ?

For it Mr Finlay

Mr Mabane observed That it is his opinion, the Court of Appeals have this authority at present, and alledges that the Court has exerted it, in more cases than one.

Mr St Ours is in doubt on this Clause.

IIIly Upon due consideration of the Copies of His Majesty's Twelfth and Fourteenth Instructions[1] by Your Lordship communicated to the Council (and heretofore by General Haldimand on the 30th of August 1781) the Committee are further of opinion, that no *reasonable* objection will lay against the trial by Jury in any personal Action, if it be at the same time Enacted for the security of His Majesty's Canadian subjects, that they shall have the benefit and use of their own Laws Usages & Customs in all controversies respecting Titles of Land, and the Tenure Descent, Allienation Incumbrances and settlement of Real Estates and the Distribution of Personal property of Persons dying intestate, according to the full intent of the said Statute of the 14th year of his Majesty's reign. (8)

(8) On the Question whether this clause stand ?

For it—Mr Finlay

Against it—Mr Mabane
Mr St Ours.

They offer a note for entry, and desire that certain memorandums of the Council in 1785,[2] may accompany the Report: and a List of the Jurors for Quebec.[3]

The note. "With regard to the article of the proposed Report relative to "the trial by Jury, Mr Mabane & Mr St Ours cannot agree to it: however "as the Ordinance expires with the Approaching Sessions, and therefore "must be renewed, or another substituted in its place, they only beg leave to "annex for His Lordship's information a Copy of Mr Mabane's Dissent from "the Register of the Council and an authenticated list of the Jurors in the "town and Banlieu of Quebec, which supports the objection to the objection "to the Trial by Jury in Civil causes.

IVly As a Court of Chancery is essentially necessary in the English System to perfect the Administration of justice in *Civil* causes, and the exercise of this trust, as well as that for those branches of the Prerogative Courts which relate to Marriages and the Probate of Wills, and the granting Letters of Administration, are vested in Your Lordship, the Committee presume *no farther*, than barely to suggest, that the subordinate Officers for the first of these Courts remain to be appointed,

[1] See p. 820.
[2] Given below; see p. 886.
[3] Given below; see p. 891.

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And that the business of the Common Pleas, well entitles its Judges to an exoneration from the burden of the Prerogative Court,[1] *if the duties of both in the same persons were compatible*; which to say no more, is very questionable, if it is the right of the former, to issue prohibitions to the latter, in cases where its powers are extended *beyond* its authority; evinced as it is, in the *constant practice of the Common Bench in Westminster Hall.* (9)

(9) On the Question, Whether this clause shall stand ?

M^r Finlay, for it
M^r Mabane } Against it
M^r S^t Ours }

Messieurs Mabane & S^t Ours desire the following entry & that the Papers referred to in it may accompany the Report.

"With regard to the Court of Chancery M^r Mabane and M^r S^t Ours, "beg leave to annex for the information of Your Lordship a paper in the "French Language wrote by M^r Panet one of the Judges of the Court of "Common Pleas.[2]

"M^r Mabane takes the liberty to observe that the power which the "French Law gives the Judges to interrogate the parties upon Oath *Sur faits "et Articles* pertinent to the cause in dispute renders the Court of Chancery "in great measure unnecessary."

"This power is much regretted by Judge Blackstone not to be inherent "in the Courts of Justice in England, and has been unwarily taken away in "Commercial causes by an article of the Ordinance which Establishes the "proof of facts in commercial matters to be according to the Rules of Evi- "dence in the English Law tho' the power still remains with regard to "other Causes, this instance of itself evinces the great delicacy and delibera- "tion with which changes should be made in the Municipal Law of any Coun- "try, for with the best intention in the World the Legislators (especially "in a conquered Country) may do a great deal of hurt instead of good, but "this may be remedied in restoring the power when the Ordinance shall be "renewed."

"With respect to that part of the Report which relates to the Preroga- "tive Court, M^r Mabane & M^r S^t Ours beg leave to annex a paper wrote "by M^r Panet for the information of His Lordship."[3]

"M^r Mabane did not consider the Commission from Your Lordship "as necessary; but as by His Majesty's Commission to Your Lordship, the "granting Letters of administration is reserved to the Governor of the Pro- "vince He acted under it with great chearfulness as a Proof of your Lord- "ship's confidence in him, but never conceived that the English words "in it, can make any alteration in the Law as Established by the Statute "of the 14^th of His present Majesty,[4] and adds, that the Judges of the Court

[1] Various papers and reports with reference to the Jurisdiction of the Prerogative Court will be found in Q 56-3, p. 773.
[2] For Mr. Panet's paper on this subject see below, pp. 892 & 896.
[3] For this paper by Mr. Panet see below, pp. 894 & 898.
[4] The Quebec Act.

"of Common pleas, have no salary nor have ever taken one farthing of "fees from the People, for the business in the Prerogative Court."

Signed by order of the Committee,

(signed) W^m Smith Chairman

Quebec 11 Jan^y 1787.

All which is most humbly submitted, by Your Lordship's most obedient and most humble servants

Quebec
11^th Jan^y 1787 (signed) Hugh Finlay
A. Mabane.
P. R. St. Ours.

THE MEMORANDUM OF COUNCIL REFERRED TO IN NOTE 8.[1]

8^th of April 1785

Read Article 27 of the projected Ordinance which was unanimously rejected.

M^r Mabane proposed an Additional article to the following purpose "Provided always and it is hereby enacted and ordained that nothing in "this Ordinance or any article thereof can, or ought to be construed to have "introduced any part of the English Law which is not expressly mentioned; "or to have made any deviation from the Law and usage of the Province "which is not clearly and expressly mentioned by the words, any Law, "usage or Custom to the contrary notwithstanding."

9^th April 1785.—

M^r Mabane agreeable to the notice by him given yesterday moved as follows viz^t. "Tho' from everything which has appeared in this Sessions I am more than ever convinced that neither the Circumstances of the Province nor any urgent necessity requires an innovation from the municipal laws of the Country of so great importance as the admission of the Trial by Jury in civil causes—Yet as the Council has voted that it should be adopted under restrictions, I think it is the duty of every member to suggest the mode which appears to him most conducive to the good or the least hurtful in his idea to the interests of the people, I therefore propose that in place of the 10^th Article reported by the Committee and rejected by the Council now standing the 9^th in the Ordinance one to the following purpose should be substituted viz^t.

"That it be enacted any Law, usage or custom to the contrary not- "withstanding, that in actions or suits at Law in the Courts of Common "pleas, grounded on debts, promises, contracts, and agreements of a Mer-

[1] Canadian Archives, Journals of Leg. Council, Vol. E, p. 141. See also Q 27-1, p. 209. This is the memorandum referred to in note 8 of the foregoing report, (p. 884). It consists of extracts from the journals of the Legislative Council relating to the passing of an Ordinance to regulate the proceedings in the courts of civil judicature, (see p. 858). The journals covering this period are given in Journals of Leg. Council, vol. D, pp. 244-255. See also Q 26-1, pp. 256-286.

"cantile nature between Merchant & Merchant Trader and Trader, and "in all actions and suits where compensation is to be made for personal "wrongs. The tryal by Jury may be had to Establish the matter of fact in "the first cause, and to assess the amount of damages in the other, Provided "nevertheless that it is clearly understood that in actions or suits at Law "between persons who are not Natives of the province, and in actions or "suits between persons who are Natives of the Province The tryal by Jury "shall be had at the desire of either of the parties and that in such actions "and causes as above where only one of the parties shall be a native the "trial by Jury is not to be had except at the desire of both parties, and in "all causes, or suits between persons not natives of the Province the Juries "shall be composed of persons who are not natives of the Province, and in "all causes or suits between Natives The Jury shall be composed of Natives "only, and in all causes and suits where one of the parties may be a Native "and the other not a Native the Jury shall be composed one half of Natives "and the other half of Persons not Natives."

Resolved that the question be put, whether the proposition of M$^{r}$ Mabane shall be adopted or not and being put, the voices standing 6 ayes and 11 Noes voted and resolved in the negative.

Copy Articles 9$^{th}$ and 10$^{th}$ referred to as proposed by the Committee and rejected by the Council.

Art. 9$^{th}$—And be it ordained and Enacted that in all causes, suits, and actions to be prosecuted in any of His Majesty's Courts of Common pleas or removed in appeal therefrom, which shall be grounded upon Debts, promises, Contracts and agreements of a mercantile nature, the same shall be heard, considered and adjudged according to the Ordinance of this province in that respect particularly provided, and the Commercial and Common law of England save and except as herein after provided.

Art. 10$^{th}$.—That all and every person having suits at law and actions in any of the said Courts of Common pleas grounded on debts promises Contracts and agreements whether of a mercantile or other nature, and also of wrongs proper to be compensated in Damages may at the option & choice of either party have and obtain the trial and verdict of a Jury, as well for the assessment of Damages on personal wrongs committed as the determination of matters of fact to be Established in any such cause, and that the verdict of such Jury shall be binding upon the parties in every respect and so far as the same by the Laws of England, the verdict of a Jury legally could or ought to be of validity force and effect. Provided always that the Agreement of nine of the Twelve Jurors who shall compose such Jury shall be sufficient and effectual to return a verdict and that the same so made and returned shall be held as legal and effectual to every intent and purpose, in as much as if the whole twelve Jurors had agreed therein. And the Clerk of the Court shall set down the names of the Jurors on the Register of the Court in every cause where Verdicts may be returned as abovesaid. Provided also that in all such causes and actions that may be

between His Majesty's Natural born subjects of Great Britain, Ireland and the Plantations and Provinces in America, the Juries in such causes shall be composed of such Natural born subjects as abovesaid and in all causes and actions between His Majesty's Canadian or new subjects the Jury shall be composed of an equal number of each if such be required by either of the parties, in any of the above mentioned instances."

11th April 1785

Resolved that the Question be put upon Mr Mabane's proposition of yesterday, "Whether the article by him proposed shall make part of the "Ordinance or not The Question being put, and the voices standing 8 Ayes and 9 noes voted and resolved in the negative. Settled the title of the Ordinance to be as follows vizt "An Ordinance to regulate the pro- "ceedings in the Courts of Civil Judicature and to establish trials by Juries "in actions of a Commercial nature and personal wrongs to be compensated "in Damages."

13th April 1785

Mr Mabane presented and read in English and French his reasons of dissent from the Resolutions of the Council upon the Ordinance for regulating the proceedings in the Courts of Civil Judicature &c, as follows vizt.

"Having during the course of the Sessions declared myself averse to "Innovations in general in the present circumstances of the province, I "think it my duty now to enter upon the Journals my reasons of dissent "from a resolution of the Council whereby the trial by Jury in civil causes "is adopted under restrictions.

The ground-work of this material change in the Municipal Laws of Canada is said to be the 12th and 16th Articles of the King's Instructions,[1] the first of which was sent to His Excellency Governor Carleton in the year 1774 or 5 soon after the Act of Parliament which regulates the Province of Quebec had been passed and the second of April 1778 was transmitted in that year to His Excellency Governor Haldimand subsequent to the Ordinances which had been made by the Legislature of this Country. I therefore put a very different construction upon the Royal instruction from that which those who have voted for the Innovation have done

The 12th Article of the Instruction recommends to the consideration of the Council whether the Law of England may not be at least *in part* the rule of decision in personal actions &c, and the 16th Article transmitted to the Governor in 1778 makes mention of Ordinances having been framed and Ordained for establishing Courts and directing a proper mode of Administring civil and Criminal Justice *conformable to the spirit and intention of the Act of Parliament therein mentioned* and recommends the con-

[1] See p. 696. The instructions given to Haldimand in 1778 simply continued those given to Carleton in 1775 (see p. 594) with the addition of a few new items, chiefly contained in article 16. See p. 697.

tinuing amending or inforcing such Ordinances or making any farther or necessary change and regulation in the Courts established or in the mode of Administring Justice provided that such Ordinances be strictly conformable to the Act of Parliament and the tenor of these Instructions I am therefore fully persuaded however inclined His Majesty might be to recommend useful and necessary deviations from the Laws of this province established by the Quebec Act no such material and fundamental alteration as that of the Introduction of the Trial by Jury could be meant or intended, because such would be contrary to the spirit and intention of the Act of Parliament which with a generosity and liberality becoming the British Nation gives to the Canadians their own Laws, Customs and usages.

2ndly Experience has shewn numberless inconveniencies attending the Trial by Jury in this Province whilst that mode subsisted from the year 1764 to the year 1775. Few people who were then in the Province can be ignorant of these inconveniencies or how little acceptable the mode of Trial by Jury was to the people or how hurtful it was to their Interests. Juries were at that time optional, but instead of being in repute, it is a fact well known that towards the latter years of the period in which they subsisted few causes were tried by Jury. It appears by an authenticated List or Extract from the record of the Court of Common pleas for the District of Quebec laid before the Council that for upwards of seven years from October 1768 to February 1775 there were only 58 causes tried by Jury in that Court and of these several were absentee causes or suits brought against persons absent from the Province, which by an Ordinance behoved to be laid before a Jury and therefore cannot be said to be at the desire of either party. The Petitions of the Canadians which procured the Quebec Act (14 Geo. 3. chap 83) and the undeniable evidence which the Preamble of that wise and salutary Law affords of the sense which the Parliament of Great Britain at that time entertained with regard to the impropriety of changing the Laws & usages of a numerous people and of an extensive Country, as well as the inadequateness of the system which had been introduced in room of the antient Law, of which the trial by Jury in civil causes at the option of the Parties was a principal part, is in my opinion conclusive, because every circumstance and every argument against such a change operates as powerfully at this day as it did then, and perhaps more so from the late revolution in America. I therefore cannot agree with those who in making regulations for this Country pay not sufficient attention to the total difference of Circumstances in almost every particular from those of England where the trial by Jury has been co-eval with the Law itself. Indeed nothing can afford more convincing proof of the impropriety of the trial by Jury in civil causes than the stretches that have been made to accomodate it to these Circumstances viz, By making the agreement of nine of the Jurors a verdict, and changing the qualification of Jurors from the Laws of England. These circumstances suffice to shew that this Prov-

ince is unfit to receive the Trial by Jury as practised in England. The unanimity of the 12 Jurors is considered by many authors as one of the Excellencies of the Institution and from the difficulty of finding Jurors in this Country unconnected by interest and friendship with the parties, this deviation from the Laws of England appears to me peculiarly unfavourable to the London Merchant as well as to the Canadian Merchant or Trader. The Qualification of Jurors instead of being debased from what the English Law requires perhaps ought to have been augmented.

3rdly The changes from the French Law that were made by the Ordinance of 1777[1] in favor of commerce, such as the introduction of the English Law of Evidence in commercial cases and the attachment of the person as well as of the Effects for the satisfaction of all debts due to Merchants for goods by them sold, shew'd no want of attention to the interests of trade, and His Majesty's 12th Instruction and therefore no doubt could be entertained, that the Council would, as far as in Justice it ought, extend its deliberations in favor of commerce and in protection of the British Merchᵗ, but much might have been done without going so far as to erect a new Tribunal in the Country unknown to its fixed Laws and which in practice will be found in many respects incompatible with them. The nomination of Experts known to the French Law served the useful purpose of Establishing the matter of fact independent of the Judges in difficult and uncommon cases, as well as proving the practice therein and fixing valuations on all disputed property and Workmanship, and in settling intricate matters of account &ᶜ, The French law provides Arbiters—In these cases the Law is written and the decision of the Courts is subject to review.

Whereas by the introduction of Juries the Canadian Merchᵗ or Trader sees no longer the rule of decision of his property in litigation which is or may be absorbed in the general Verdict of a Jury.

4thly—Tho convinced by the experience of 24 years constant residence in the Country and 20 years study and practice of the law as a judge, that the trial by Jury in civil causes was improper in general; yet as the Council had voted the contrary, I thought it my duty to propose in my turn that mode which I conceived the least prejudicial to the Canadians, and accordingly did make a proposition of the 9th Instant entered upon the Journals, but the Council rejected it, tho' it complied in every thing with the desire of the British subjects, except that it gave to the Canadian Merchant in his disputes with them in commercial cases the choice of having his property decided agreeable to the Laws and usages of his native Country, which by the Act of Parliament were granted to him without reserve and that he should not be forced into a mode of trial to which he might be averse.

5thly When I consider the 9th and 10th Articles of the Ordinance proposed by the Committee of which a copy is annexed, I thought it my duty to propose an additional article which is inserted upon the Journals

[1] See p. 466.

and which could serve no end but to quiet the minds of the Canadians and reconcile them to the change made in the Ordinance, by giving them the most positive assurances that nothing which was not clearly expressed was innovated. This article however salutary was rejected solely by the same Majority which at the commencement of the Sessions voted against postponing the consideration of the new Ordinance till next Sessions. I have further to observe that the time was improper for changes of this nature and that more compleat evidence of the necessity or practicability of Introducing Juries in civil causes than vague lists of names laid upon the Table should have been produced to the Council, a minute enquiry ought to have preceded the business and every necessary preparation made before hand.

For these reasons I dissent from the resolution of the Council and shall be much satisfied if experience shall prove that I am wrong in my opinion and that the innovation will be found useful to the people.

(signed) A. Mabane.

A LIST OF MERCHANTS &c, QUALIFIED TO SERVE ON SPECIAL JURIES.

| Names | Occupation | Names | Occupation |
|---|---|---|---|
| Joseph Descheneau | Esquire | William Lindsay | Esquire |
| Louis Langlois | Merchant | John Purss | Merchant |
| Michael Longvall | Dº | Constant Freeman | Dº |
| Francois Pomereau | Dº | Adam Lymburner | Dº |
| Antoine Serindac. 5 | Dº | Robert Wilcocks | Dº |
| Jean Bapt Guirault | Dº | Nathaniel Taylor | Esquire |
| Jean Bapt Le Brun | Dº | Thomas Sketchley | Auctioneer |
| Charles Berthelot | Dº | John Young | Merchant |
| Jacques Perault | Dº | Henry Cull | Dº |
| Louis Fromenteau—10 | Dº | Robert Lester | Dº |
| Jean Bapt Le compte Dupré | Esquire | James Tod | Dº |
| Pierre Marcoux | Merchant | David Barclay | Dº |
| Louis Marchand | Dº | John Blackwood | Dº |
| Pierre Dufau | Dº | Alexr Davison | Dº |
| Louis Duniere—15 | Dº | William McNider | Dº |
| Michael Cornud | Dº | William Burns | Auctioneer |
| Louis Freemont | Dº | John Painter | Merchant |
| Charles Pinguet | Dº | William Gill | Dº |
| Jacques Perras | Dº | John Jones | Dº |
| Liberal Dumas—20 | Dº | John Pagan | Dº |
| Charles Voyer | Dº | Simon Fraser Junr | Dº |
| Antoine Raby | Dº | Roderick Fraser | Dº |

[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 149. See also Q 27-1, p. 224. This is the list of Jurors referred to in note 8.

| Names | Occupation | Names | Occupation |
|---|---|---|---|
| Joseph Duval | Merchant | John Buchannan | Merchant |
| Amant Primont | D° | James Johnston | Esquire |
| Josep Marie Cherrier—25 | D° | John Antrobus | Merchant |
| Louis Turgeon | Merchant | Simon Fraser Sen$^{r}$ | D° |
| J. Bap$^{te}$ Brassard | D° | Rich$^{d}$ Dalton | D° |
| Antoine Gosselin | D° | Mathew Lymburner | D° |
| Etienne Gouvereau | D° | Obadiah Aylwin | D° |
| Antoine Cureux S$^{t}$ Germain | D° | Alexander Wilson | D° |
| Alexis Monjeon | D° | Meredith Wills | D° |
| Henri Crebassa | D° | Andrew Cameron | D° |
| Francois Duval | D° | Jacob Rowe | D° |
| Charles Guirand fils | D° | Alexander Ross | D° |
| John Lynd | D° | David Ross | D° |
| John M$^{c}$Cord Junior | D° | John Walter | D° |
| John Munroe | D° | George Irwin | D° |
| William Roxburgh | D° | Ezekiel Freeman | D° |
| Mathew M$^{c}$Nider | D° | David Shoolbred | D° |
| Robert Woolsey | D° | John Lees | D° |
| John Melvin | Auctioneer | William Lindsay Jun$^{r}$ | D° |
| Thomas Aylwin | Esquire | George Stuart | D° |

(signed) A. Mabane.
P. Panet.

The above is a true copy of the Original List of Jurors filed in the office of the Court of Common pleas for the District of Quebec 4$^{th}$. Jan$^{y}$, 1787.

(signed) David Lynd, C.C.P$^{s}$.

A PAPER BY MR. JUDGE PANET, REFERRED TO IN NOTE 9.[1]

*Des Interrogatoires sur faits et Articles.*

Du Tems du Gouvernement françois il n'y avoit point de Cour de Chancellerie en Canada, cependant le Conseil superieur de Quebec avoit le pouvoir de donner des lettres d'Emancipation et de Restitution contre les Actes susceptibles d'estre rescindez, ces Lettres etoient addressées aux Juges des Jurisdictions inferieures qui prononcoient à leur entherinement ou à leur rejection, il y avoit appel des jugements des Cours au Conseil.

On ne souffroit pas beaucoup ou pour mieux dire on ne souffroit pas, de ce deffaut de Chancellerie puisque les plaideurs avoient le droit de se faire interroger sur faits et Articles en vertu de l'ordonnance de Louis Quatorze de L'Année 1667. Enregistrée au Conseil superieur de Quebec.

[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 152. See also Q 27-1, p. 227.

Ces Interrogatoires etoient bien nécéssaires dans des Causes obscures pour decouvrir la verité. Voici tout au long L'Ordonnance de 1667.[1]

Article 1er

Permettons aux parties de se faire interroger en tout état de cause sur faits et Articles pertinent concernant seulment la matière dont est Question pardevant le Juge ou le différent est pendant, et en cas d'absence de la partie pardevant le Juge qui sera par lui commis le tout sera retardatoire de L'instruction et Jugement.

2.

Les Assignations pour repondré sur faits et Articles seront données en Vertu d'Ordonnance du Juge sans commission du Greffe, encore que la partie fut demeurante hors du Lieu ou le différent est pendant, et sans que pour L'Ordonnance le Juge et le Greffier puissent pretendre aucune chose.

3.

L'Assignation sera donnée à personne au Domicile de la partie et non à aucun domicile elu n'y a celui du procureur, et sera donné copie de L'Ordonnance du Juge et des faits et Articles.

4.

Si la partie ne compare au jour et lieux qui seront assignées ou fait refus de repondre, sera dressée un procés Verbal sommaire faisant mention de L'assignation et du refus et sur le procés Verbal seront les faits tenus pour confessés et averréz en toutes Jurisdictions et Justice, meme en nos Cours de Parlements grand Conseil Chambre des Comptes &c,

5.

Voulons neanmoins que si la partie se presente avant le Jugement du procés pour subir l'interrogatoire, elle soit recue à repondre à la charge de païer les frais de L'interrogatoire et d'en bailler copie à la partie, meme de rembourcer les depens du premier procés verbal, sans pouvoir les repeler et sans retardation du Jugement du procés.

6.

La partie repondra en personne et non par procureur n'y par ecrit, et en cas de maladie ou empechement légitime le Juge se transportera en son domicile pour recevoir son Interrogatoire.

7.

Le Juge apres avoir pris le Serment recevra les reponsés sur chacuns faits et articles et pourra meme d'office interroger sur aucuns faits quoiqu'il n'en ait point été donné copie.

[1] This constitutes "Titre X" of the "Ordonnance de Louis XIV, roi de France et de Navarre, du mois d'avril 1667." This ordinance was framed for the purpose of introducing uniformity, simplicity and certainty into the general laws of the Kingdom of France. This section will be found in Vol. I, p. 124 of the "Edits, Ordonnances" &c. Quebec, 1854. The text here given follows the copy in the Public Record Office, but, on comparison with the text in the Quebec edition, it will be found that there are several variations. Where possible the translation follows the text here given.

8.

Les réponses seront precises et pertinentes sur chacun faits et sans aucun termes injurieux et Calomnieux.

9.

Seront tenus les Chapitres, Corps, et Communautez de nommer un Sindic procureur ou Officiers pour repondre sur les faits et Articles qui lui auront été communiquez et à cette fin passeront une pouvoir spécial dans lequel les réponses seront expliquez et affirmés veritables autrement seront les faits tenus pour Confessés et averés sans prejudice de faire interroger les Sindics Procureurs et autres qui ont agit par les ordres de la Communauté sur les faits qui les concerneront en particulier pour y avoir par le Juge tel égard que de raison.

10 et D^ne^

Les Interrogatoires se feront aux depens de ceux qui les auront requis sans qu'il puissent en demander aucune repetition n'y les faire entrer en Taxe meme en cas de Condamnation de depens.

Il seroit à souhaiter que cette Loy si simple fit partie des formes de proceder, L'Ordonnance derniere garde le silence sur un objet si interressant.

ANOTHER PAPER, BY MR. JUDGE PANET, REFERRED TO IN NOTE 9.[1]

*Des Tutelles et Curatelles.*

Du tems du Gouvernement francois, les Juges de Quebec Trois Rivieres et Montréal, non seulement rendoient la justice en toutes Actions civiles; mais encore procedoient à L'election des Tuteurs, subrogez Tuteurs et Curateurs sur assemblée de parents et amis au nombre de sept, ils n'avoient pas de Commissions particuliere pour ces sortes d'Objets cette forme de procedée fut continuée apres la Conquete jusqu'en L'année 1764 tems auquel le Général Murray introduisit dans les Cours de Justice les loix D'Angleterre. Ce meme General accorda aux Juges Mabane et Fraser des Commissions de Surrogates.

En vertu de cette Commission le Juge surrogate de Montréal (J'ignore ce qui se passa à Québec) au lieu d'actes de Tutelles donna des Lettres d'administration suivant la forme angloise, et obligea les Administrateurs à donner des cautions. Ces Cautionnement repugnerent beaucoup aux habitants, plusieurs ne firent d'Inventaire faute de pouvoir trouver des Cautions ceux qui en trouverent furent obligez d'Envoyer leur Inventaires à Quebec seul Bureau d'enregistrement Les frais d'enregistrement etoient considerables et diminuoient beaucoup le peu de biens qu'ils avoient; cette nouvelle methode de proceder occasiona beaucoup de murmures et

[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 155. See also Q 27-1, p. 231.

de plaintes, elles parvinrent en L'Année 1767—à son Excellence le General Carleton qui enjoignit aux Juges de laisser la nouvelle forme et de reprendre L'ancienne comme plus aisée et bien moins couteuse, ce qui fut pratiquée jusqu'en 1775.

Il auroit été à souhaiter qu'on eut pensé lors de la redaction des Ordonnances a promulger les loix concernants les Tutelles et Curatelles, on oublia des objets si interessants, les Juges des Plaidoyers Communs furent pouvus de Commissions du Gouverneur pour accorder des Lettres d'administration et sans penser que ces Commissions n'etoient pas necessaires, il se qualiffierent des Juges de la Cour des Prerogatives et continuerent à proceder aux Elections de Tuteurs et Curateurs suivant la forme et les anciens usages cependant ils accorderent des Lettres D'Administration aux anciens sujets suivant la forme Angloise.

Les Juges des plaidoyers Communs prévoyant le danger et les difficultés d'avoir deux formes de proceder dans une meme province prirent la resolution il y a 4 ou 5 ans de presenter au Conseil un projete de formes de proceder pour les Actes de Tutelles, Curatelles il en resultoit plusieurs avantages. 1° L'instruction des Anciens Sujets—2° Une forme pertinante, d'autant plus necessaire que les françois n'ont point de Loix ecrittes pour ces sortes d'actes, l'usage constament pratiqué en Canada depuis l'Etablissement du pais tient lieu de Loy mais la pluspart des Membres du Conseil soutinrent qu'il etoit inutile de faire une Loy à cet egard, vous avez dirent-ils des usages qui tiennent lieu de Loy continués les; il fut faite des reflections sur ce qu'on avoit accordé des Lettres d'administration suivant la forme Angloise; depuis ce tems les Juges ont continuée a donner de Lettres de Tutelles et Curatelles selon la forme françoise reflechissants qu'il seroit dangereux d'avoir deux formes de procedér dans une meme Province et l'embarras qu'il y auroit lorsqu'un des conjoints par marriage seroit né en Angleterre et l'autre en Canada, distinction epineuse et sujet à milles difficultés.

De L'insinuation et Enrégistrement des Donations entre vifs et des donations faites entre conjoints par contrat de marriage.

Par le coutume de ce pais toutes donations entre vifs doit être Enregistrée dans les 4 mois à peine de nullité avant la conquete, l'enregistrement se faisoit dans les Registres des Greffes des differentes Jurisdictions et depuis jusqu'à prèsent cet usage a été continué.

Il est de la plus grande necessité de laisser aux Juges de la cour des Plaidoyers Communs l'administration de ces sortes d'objets dont ils connoissent la forme, sans cela il naitra une multitude de procés qu'on doit soigneusement eviter.

Endorsed B
In Lord Dorchester's N° 17.
of 13 June 1787.

(*Translation.*)

A PAPER, BY MR. JUDGE PANET, REFERRED TO IN NOTE 9.

*Concerning Examinations on Facts and Evidence.*

At the time of the French Rule there was no Court of Chancery in Canada, but The superior Council of Quebec had the power of giving Letters of Emancipation and of Restitution against Acts which could be repealed, these Letters were addressed to the Judges of the inferior Jurisdiction, who gave Judgment on their Ratification, or their rejection. Appeal could be made from the Judgments of these Courts to the Council.

The people did not suffer much, or rather they did not suffer at all from this lack of a Court of Chancery, seeing that the litigants had the right to insist on being examined concerning facts and evidence in virtue of the Ordinance of Louis Fourteenth of the Year 1667, registered at the superior Council of Quebec.

These Examinations were very necessary in obscure Cases for discovering the truth ; here follows in full the Ordinance of 1667.

Article 1[a]

We hereby give Permission to all Parties to insist on Examination in any kind of case, on pertinent facts and Evidence relating only to the affair in Question before the Judge where the dispute is pending, and in the case of the absence of the party then before the Judge who is commissioned by him, the whole without retarding the information and Judgment.

2.

Summons to answer concerning facts and Evidence shall be issued in Virtue of the Order of the Judge without commission from the record office, even though the person concerned is residing out of the Place where the suit is pending, and without an Order, the Judge and the Recorder have not authority to undertake anything.

3.

Examination shall be granted to any one at the house of the party concerned, and not at any other house chosen nor at the house of the procureur, and a Copy of the Order of the Judge and of the facts and Evidence shall be given.

4.

If the party concerned does not appear at the Day and Place assigned, or refuses to answer, a summary verbal process shall be issued making mention of the Summons, and of the refusal, and in the Verbal process the facts shall be held as Confessed and proved in all jurisdictions and Courts

of Justice, even in our Courts of Parliament, grand Council, Office of Public Accounts, &c[a].

5.

It is our will nevertheless that when the party concerned appears before the Judgment of the suit to undergo examination, he shall be called upon to answer to the demand to pay the cost of the examination and of furnishing a copy thereof to the other party, and also to repay the costs of the first verbal process, without the right to repeal them and without delay in the Judgment of the case.

6.

The party concerned shall reply in person, and not through a procureur, nor by writing, and in case of illness or of Lawful Hindrance the Judge shall proceed to his house to carry out the examination.

7.

The Judge after having administered the Oath shall receive the reply to each fact and Evidence, and in virtue of his office shall have power to ask questions concerning any facts, although he may not have been given a copy thereof.

8.

Answers shall be precise and pertinent on each charge, and without any injurious or calumnious Expressions.

9.

Chapters, Bodies and Communities shall be held and empowered to nominate a Syndic, Attorney or Officer to reply to the facts and Evidence communicated to him, and to this end shall issue a special power in which the replies shall be Explained and affirmed to be true, otherwise the facts shall be held as confessed and proven without prejudice to the examining of Syndicates, attorneys and others who have acted by the order of the Community with respect to the facts which specially concern them so that they may receive from the Judge due consideration.

10 and last.

Examinations shall be held at the expense of those who shall have required them, without their having the right to demand any repetition nor to enter them as a Tax, even in case they are condemned to pay the costs.

It is to be wished that this simple Law had been made a part of the forms of procedure, the last Ordinance is silent on this most interesting point.

ANOTHER PAPER BY MR. JUDGE PANET, REFERRED TO IN NOTE 9.

(*Translation.*)[1]

Curatelle et Tutelle.

Translation of Judge Panets paper, which Messieurs Mabane and S^t^ Ours desired might be annex'd to the Report of the Committee appointed to consider the Courts of Justice.

10.

*Of Guardianships and Curatorships.*

In the time of French Government, the Judges in Quebec Montreal and three Rivers, not only rendered Justice in all Civil Actions, but proceeded also to the Election of Guardians, Surrogated Guardians and Curators, by Assemblies of relations & friends to the number of Seven; they had no particular Commissions for objects of this kind; this mode of proceeding continued after the Conquest until the Year 1764, when General Murray introduced the English Laws in the Courts of Justice, He also granted Commissions as Surrogates to the Judges Mabane & Fraser.

By virtue of this Commission the Judge Surrogate of Montreal (for I do not know what passed in Quebec) instead of Acts of Guardianship, granted letters of Administration according to the English form, and obliged the Administrators to give securities, these securities were very disagreeable to the Country Inhabitants, many of them made no Inventories for want of being able to find security, those who found security were obliged to send their Inventories to Quebec where the only Register Office was kept, the charges of registering were considerable, and they greatly diminished the little property in their Hands; this new method of proceeding occasioned much murmuring and many complaints which in 1767 reached the Ears of General Carleton, who Ordered the Judges to drop the new form and to resume the Old one, as much easier and much less expensive, this mode was followed until the Year 1775.

It is to be wished that, at the time of framing the Ordinances, instead the Promulgation of the Laws concerning Guardianships and Curatorships had been thought of, these objects however interesting were forgotten, the Judges of the Common Pleas had Commissions from the Governor to grant Letters of Administration, and without reflecting that these Commissions were not necessary, they took the appellation of Judges of the Prerogative Court and continued in proceeding to Election of Guardians & Curators according to the ancient Form and Usages, however they granted Letters of Administration to ancient Subjects according to the English forms.

The Judges of the Common Pleas foreseeing the danger and difficulties of having two forms of proceeding in One Province, took the resolution

[1] See Papers Leg. Council 1786-7.

about 4 or 5 Years ago, to present to Council a Project of Forms for proceeding in Acts of Guardianship and Curatorship, from which many advantages would have resulted.

1st The Instruction of Ancient Subjects, 2d a permanent form, which was the more necessary as the French have not any written Law for Acts of this kind, the Usage constantly followed in Canada since the settlement of the Country stand instead of Law; but the Majority of the Council maintained that it was useless to make a Law for the purpose, You have (said they) Usages that stand instead of Law, continue them, It was reflected that Letters of Administration were granted according to English forms since that time the Judges continued to grant letters of Guardianship & Curatorship according to the French forms, considering that it would be dangerous to have two forms of proceeding in One Province, and the difficulty that would arise when one of two persons joined in Wedlock may have been born in England and the other in Canada, this is a nice Distinction and subject to a thousand Difficulties.

If recording and Registering mutual Donations made after Marriage, and Donations made by Contract before Marriage between the contracting Parties.

By the custom of this Country every mutual or other Donation should be registered within four Months under the Penalty of becoming Void, before the Conquest they were registered in the registry of the Office of the different Jurisdictions, and from that time to the present that Usage has been continued.

It is extremely necessary that the administration of matters of this kind should be left to the Judges of the Common Pleas, as they are Acquainted with the Forms of proceeding in them, otherwise it will create a multitude of Lawsuits which should be carefully avoided.—

## C

## REPORT OF THE COMMITTEE OF COUNCIL RELATING TO COMMERCE & POLICE.[1]

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[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 157. See also Q. 27-1, p. 235. The index to this Report will indicate the varied and interesting character of the subjects dealt with. Only some of these, however, have a sufficiently direct bearing upon the constitutional issues of the time to be included in this volume. The page numbers in the left hand columns refer to the copies in the Canadian Archives, while the numbers, in brackets, which follow the articles, indicate the pages at which those reproduced in whole or in part in this volume will be found. As indicated in the Minutes of Council (see p. 871), those appointed to be members of this Committee were Messrs. Levesque, Harrison, Collins, Grant and Pownall.

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To His Excellency the Right Honourable Guy Lord Dorchester Captain General and Governor in Chief of the Colonies of Quebec, Nova Scotia and New Brunswick and their Dependencies &c, &c, &c.

The Report of the Committee of Council on Commerce and Police.[1]

May it please Your Lordship,

In obedience to your Lordship's Commands, signified in Council on the 6$^{th}$ November last, whereby you was pleased to appoint us, to be a Committee to take into consideration the

> "External and Internal commerce and regulation of the Police
> "having an eye to the ancient Laws and Usages of the Province,
> "and to report to Your Lordship our considerations thereon,
> "with as much dispatch as we should find convenient."

We now with the utmost diffidence lay before Your Lordship not only our report, but a Journal of our proceedings in order to obtain the thoughts of others, more experienced than ourselves, on Objects of such extensive concern to the well fare of the Province, and the happiness of His Majesty's subjects under Your Lordship's Government.

At our first meeting as a Committee, on the 13$^{th}$ of November, We perceived the necessity of calling for the assistance of our fellow Citizens on the Considerations committed. Considerations in which the happiness and greatest interests of the Country were evidently to be contemplated.

We therefore thought it our duty consistent with the powers communicated to us by your Excellency to consult the opinions, and take the Ideas, of the principal Merchants and Magistrates of the Province, rather than solely to hazard opinions of our own.

To obtain these in the most unbiassed manner We immediately wrote to the Magistrates Merchants and Citizens of Quebec, Montreal and Three Rivers. We acquainted them with Your Excellency's recommenda-

[1] See Journals of Leg. Council, vol. E, p. 157; also Q 27-1, p. 237.

tions to us and entreated their sentiments. We also wrote to the Collector and Comptroller of His Majesty's Customs requesting an account of the Imports and exports, and of the Shipping employed in the Trade and Commerce of the Province since the peace.—We wrote to M^r^ Ja^s^ Frost Master of the port, M^r^ Steel Master of His Majesty's Provincial Vessel the Mercury, M^r^ Constant Freeman an experienced Ship-Master, M^r^ Chenique and M^r^ Peter Fraser experienced Pilots; requesting their Information respecting the present state of the Navigation and Pilotage of the River Saint Lawrence, and the improvements that might be made therein.

Your Lordship was pleased to order to be laid before us, the Application of Levi Allen Esq^r^ on behalf of the State of vermont for Commercial intercourse with this province, and through it to Britain, and the other Country's in His Majesty's Dominion; And at same time a letter from the Collector of His Majesty's Customs, stating the Revenue laws which apparently impeded such intercourse.

We received by Your Lordship's command, two letters from M^r^ Geo. W^m^ Howard a Merchant of Jamaica and one from M^r^ Bannatyne a Merchant of S^t^ Christophers on the subject of the Trade from the West Indies to this Province; the importation of Foreign Molasses, and the suppression of Distilleries: and Your Excellency was also pleased to refer to us the Observations of M^r^ James Grant a Merchant of this place on the same subject.

By your Excellency's command we received from Cap^t^ Le Maistre a List of His Majesty's Vessels employed on the Lakes, Ontario, Erie and Huron; and from Lieutenant Governor Hope, a letter and representation of M^r^ Isaac Todd Merchant in Montréal, respecting the navigation, and the transport and carriage of Merchants goods from, and to, the different ports or posts, on those Lakes.

Lieutenant Governor Cox, and John Collins Esq^r^ have represented to Us the state of the Cod-Fishery in the Gulph and River S^t^ Lawrence, and pointed out such Regulations as seem necessary for carrying it on, We take the liberty of annexing their papers, and of entering Your Excellency's reference to them.

On the 4^th^ December We received the Return or Report of the Gentlemen to whom we had written respecting the Pilotage and Navigation of the River which with other papers, we also annex for Your Excellency's inspection.

On the 8^th^ December we received from the Collector and Comptroller a return or Abstract of certain Exports, Imports and Shipping from 1^st^ May 1783 to 1^st^ December 1786.

On the 27^th^ December the Magistrates of Quebec presented their sentiments respecting the amendments which seem requisite in the police of their District, and other objects of useful regulation.

On the first January, the return of the Magistrates and principal Merchants of Three Rivers respecting regulations of Trade and Police.

On the 6th January the Merchants of Quebec delivered their opinions and representations on a variety of Objects of Commercial and Political regulation; to which they have annexed the Copy of a Petition to His Majesty Transmitted to the Right Honourable Lord Sydney in the fall of 1785

And

On the 27th January

the Magistrates and Merchants of Montréal delivered their opinions on a variety of similar and other objects, to which they have annexed a petition His Majesty transmitted fall 1785.

In *these*, they have deeply and accurately treated, and judiciously reasoned on the actual Situation, and various interests of the Province: We should therefore, be wanting to them, and to Your Excellency, if we did not annex, and recommend their representations to Your Lordships most serious consideration and reflection.[1]

We proceed to submit our own opinions, as far as we have been able hitherto to form any.[2]

Report of the Merchants of Quebec by their Committee to the Honorable Committee of Council on Commercial Affairs.[3]

Article 10th "Recovery of Debts on the principles of the English "Commercial Laws, speedy processes and additional Laws for the recovery "of small debts in the Country."

Observation The Kings Proclamation of October 1763 promised the future settlers in this Province the benefit of the Laws of England: Those Laws were accordingly introduced by an Ordinance of the Governor and Council in September 1764[4] but unfortunately abrogated in all civil causes by the Act of the 14th Geo. 3d Chap 83.[5] which Statute instead of remedying temporary abuses, introduced great evils, particularly to the Trading interest of the Nation. The Merchants in England and those of this Province have severally felt the effects and disposition of Laws to which they were utter strangers, the principles whereof are Anticommercial altogether.

The Custom of Canada is a system so imperfect and defective that the decisions in the Courts have been arbitrary and destitute of uniformity; The Court of Montréal differs in its practice as well as decrees from that of Quebec, both Courts agree in not confining themselves to Rules of Law, but occasionally decide on the Equity of the case contrary to the Letter of the Law.

Thus the Custom of Canada, the general laws of France The Roman Code, and in some Commercial points the Laws of England have been resorted to; but the most dangerous of all systems is that of the decisions

[1] These papers are referred to in index above, where the page references are given.
[2] As the committee deal almost entirely with economic questions, this section is omitted.
[3] See Journals of Leg. Council, vol. E, p. 171; also Q 27-1, p. 260. Articles 1 to 9 are omitted as dealing with commercial and similar matters.
[4] See p. 205.
[5] The Quebec Act, see p. 570.

in Equity of Courts, strictly constituted as Courts of Law, without the Ordinary Rules, Principles and maxims of Courts of Equity to govern them.

This versatility in the decrees of the Courts, alone calls for a solid system of Laws; and surely no better can be resorted to than the Laws of England to govern the property of British Subjects.—The Imports and Exports of the province being upwards a half a Million a year and from the nature of the property liable to be more affected by the Laws of the Country and the practice of the Courts than any other.

We therefore recommend a re-introduction of the Common and Statute Laws of England as the general rule for the decision of all matters of Controversy relative to personal property and civil rights in all personal Actions grounded upon Debts, Promises, Contracts, and Agreements, whether of a Mercantile or other nature and also concerning Wrongs proper to be Compensated in Damages with an exception to the Statutes regarding Bankrupts and other local laws hereafter to be explained, as inapplicable to the situation and circumstances of the British Colonies in America in general or this in particular—With an exception also to all real actions or Controversies respecting the titles of Land, and the Tenure, Descent, Alienation incumbrances and settlements of Real Estate and the distribution of the personal property of persons dying intestate, in all which His Majesty's new subjects are most interested for the Decision whereof, except in certain cases hereafter to be mentioned, Resort should be had to the Laws and Customs of Canada, but that Juries should be granted in all Courts having original jurisdiction, if demanded by either party, in all Real and personal Actions whatever.

There must exist some Capital defects in the Constitution or Practice of all the Courts of Law on account of the great delay and procrastination in the decision of causes, which occasions many unnecessary appearances and attendances and creates ruinous expences to the parties.

It is found by experience that the frequency of holding Courts tends to keep up a spirit of Litigation among the people, without procuring the effect intended, a speedy Administration of Justice; We are therefore of opinion that stated terms not more than six nor less than four in the year, are more eligible than these continual Courts, and that the Court of King's bench, should be restored to its former Jurisdiction and powers in civil causes.

To grant to Justices of the peace in the Country the powers they heretofore possessed[1] in determining matters of property to a small amount under the Ordinance of the 17th September 1764, and thereby to prevent the great expences of distant suitors to procure justice, to rectify the rules of practice, and to reduce the Fees and expences of Litigation in all the Courts suited to the abilities of the people, we humbly apprehend would be productive of great good to the Province.

[1] Before the introduction of the Ordinance of 1770 (see p. 401) which abrogated the powers previously exercised under the Ordinance of 1764, (see p. 205.)

It would be proper to divide the Province into more districts or rather Counties erecting a Jurisdiction for Three Rivers according to its antient Boundaries, from S^t^ Anne to Berthier on the North, and from S^t^ Pierre to Yamaska on the South side of the River S^t^ Lawrence.

Inferior Jurisdictions should be granted to Cataraqui[1] and to Chaleur Bay[2] as Counties which would give this mutilated Province a respectable appearance, and forward its settlement, a measure, we think dictated by good policy.

Article 11^th^ "The present Establishment for Appeals in commercial causes."

Observations The defects in the practice in the inferior Courts as pointed out in the observation in the last Article have made their way into the Court of Appeals[3] which for these eight years last past has laboured under a great disadvantage, namely, that of not having one Gentleman bred to the science of the Law presiding or sitting in that Court in order to explain the Law, and mark out the Errors in the proceedings if any, to the other Members. Indeed it is much to be lamented that there do not preside in all the Courts regularly bred Professional Men, capable of Conducting the Business with propriety and dispatch, to the want whereof we in some measure attribute the great delays and prolixitys of the proceedings in the decision of causes, without any imputation on the Judges.—The great number and fluctuation of the Members of this Court must also of necessity embarrass Decisions and create delays. If this Court was in its Constitution assimilated to that of others in His Majesty's Colonies, we humbly conceive that the alteration would be beneficial to the Subject.

Article 12^th^ "The Establishment of a Court of Chancery"

Observation A Court vested with Constitutional powers and established under wise rules and regulations to determine causes in Equity by an easy process, avoiding as much as possible dilatory pleas with convenient dispatch and very moderate Fees and expences will tend to grant relief to those who actually suffer or think they do so, under the rigour of legal decisions in particular cases. A Court thus constituted, in which one or more able professional men shall have a seat, is a very desirable establishment, and what this Province has been deprived of, and many to their great concern have felt the want of, since the year 1775.[4]

Article 13^th^ "On a Registry of all Deeds."

Observations The Frauds committed by Debtors in mortgaging their Estates for much more than their value, for want of a Public Register Office[5] are too sensibly felt by almost every Merchant in the Province.—

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[1] Afterwards Kingston, the centre of the western settlements of the Loyalists.

[2] Afterwards known as the District of Gaspé.

[3] The Court of Appeal, like the Executive Council, consisted of any five or more of the members of the Legislative Council.

[4] The Quebec Act came into force May 1st, 1775.

[5] Under the French system, mortgages or hypotheques were executed by notaries in whose offices alone records of these were kept; hence it was practically impossible for any one purchasing real estate or giving credit on the security of it to have any certain knowledge of how many previous obligations were registered against the property. This remained for many years one of the chief grievances of the mercantile element in the Province of Quebec.

SESSIONAL PAPER No. 18

It would be a very salutary measure to record all Incumbrances on real estates in order to give them validity and thereby prevent such frauds, and the great objection thereto that it would expose the secrets and situation of Families without reasons, may be obviated by enacting that no person shall be entitled to information regarding the Incumbrances of an Estate, without making oath that he is interested therein, and that the Register-Keeper shall give the necessary extract and not allow the Books to be examined.

But as it has been discontinued so long, and the justice of such an *ex post facto* Law, may be questioned by some, and strongly opposed by others, may we not take the medium between the two Extremes and recommend, that in case a Law to register past Mortgages and incumbrances should be impracticable that at any rate an Ordinance be enacted the next Sessions of the Legislative Council for the due registering of a *Memorial* of all Deeds of sale, Mortgages, Obligations, Marriage Contracts, Donations, Dowers, or any other Deeds affecting Real Estates, that shall be passed, within a certain short limited time and for the future, which Memorial should specify the heads of the necessary Clauses in a concise manner with a reference to the Originals to have recourse to in case of need, to be furnished by the Notary and recorded by the Party in the Public Register's Office in Quebec within 30 days after such deed shall be passed together with such other regulations as shall be necessary to ordain relative thereto ?

It might be proper to declare in the said Law, that all Leases of Houses or Lands or a Memorial thereof, recorded in the public Registers shall be binding on the Lessor and bind the said Leased premises, according to the Covenants, notwithstanding the Claim or right of dispossessing or ousting such Lessee by virtue of the Coutume called *Droit* de *Bourgeois* de *Paris* or by any other Law or Custom whatever.

That all Deeds, Obligations, Mortgages, and Agreements executed before one or two Witnesses shall be binding on the parties and being recorded of equal validity as though the same had been passed and executed before a Notary, any Law or usage to the contrary notwithstanding.

Article 14th "On a Bankrupt Law."

Observation Public credit and punctuality in dealings are not sufficiently established nor in this province yet ripe enough for the introduction of the Bankrupt Laws of England in their full extent, yet we are of opinion that a Law is necessary to ascertain the Criterion of a state of Bankruptcy and to compel the insolvent Debtor in that situation to a surrender of his Books, papers, and property upon Oath for the benefit of all his Creditors, in which Law, the right of the Wives of all persons concerned in Trade or Commerce, to the real or personal Estate of such Bankrupt, should be ascertained. A distinction should be made in the Treatment of a fraudulent and unfortunate Bankrupt, the former should be punished exemplarily yet not cruelly lest the end be defeated the latter on a full proof of his

Losses and Misfortunes and a faithful surrender of his effects, after a reasonable time wherein he shall have used his utmost diligence towards the settlement of his affairs, should be, with consent of a Majority of his Creditors in number and value entitled to a discharge.

Article 15th "The Tenure on which the Crown Lands are hereafter to be "granted, it being an object connected with Commerce."

Observation In order to encourage effectually the settlement of the ungranted Crown Lands behind the Canadian Seigniories and other parts of this extensive Province, by American Loyalists and other Emigrants— It would be highly necessary we conceive, to make out those Grants in Townships and in free and common soccage similar to the concessions in the Provinces of Nova Scotia and New Brunswick and those heretofore granted in the Royal Governments now Neighbouring States. This is the only Tenure to which English Subjects will be reconciled and we are firmly of Opinion that it will induce a very large number of Persons to resort hither to the improvement of Agriculture, the Increase of Population, and extension of Trade. The antient feudal System of holding Lands in Fief et Seigneurie as well as en Roture in quality of Vassals is inimical to a free Commerce, and together with the Constitution of the Government has greatly tended to prevent the settlement of Lands and improvement of the Province hitherto, and will still have the same evil tendency until the lands to be granted are actually conceded or declared to be so, on a more liberal Tenure, for not only the desires but even the prejudices of the People ought to be considered. Nor can this proposed mode of Granting new Lands operate any evil with respect to the antient Inhabitants of the Country now holding under the feudal system, for we see different tenures of Lands in many of His Majesty's Dominions without producing any bad effects. Measures like these, we are confident will soon give this Province the form and figure of a British Colony, bring forth its resources, and raise it into consequence.

Article 16th "That a Standard should be fixed for Weights and Measures "throughout the Province."

Observation To regulate the Weights and Measures on a permanent basis throughout this Province would tend to the facility of commerce and the prevention of frauds. Great abuses exist at this time scarce two weights or two measures are found exactly alike, It is not the use of French measures for grain &c, and English Weight for Flour and the like that Creates difficulties, the custom has been long understood and well established in those particulars but it is the irregularity thereof that requires amendment.

The proper Officer should procure and keep stamped weights and measures for a Standard, the measure corresponding exactly with the French *Minot* or *demi minot*, the only measure known here for grain, salt &c,—The measure for Linens and Woolens should be the English Yard, or Ell of five Quarters of a Yard. The measure for timber the English foot of twelve inches.

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The measure for wine and Spirits should be the English wine Gallon and that for Beer should be the English Beer Gallon.

The Weights used in Towns and public markets and in Shops and Ware-Houses should be the English Avoirdupoids weight. The Quintal or Hundred weight to be one hundred and twelve pounds of that weight. Such Officer should keep all those measures and weights in his possession for a Standard and have power and be obliged to examine and Stamp all weights and Measures on being paid a reasonable allowance for his trouble, and a fine sufficient to prevent evil practices, should be levied on all persons using unstamped or deficient weights and measures. Provided nevertheless that any person making his election to use French weights or the French Liquid or timber measure, such should be made in a different form and of different materials from the English for a plain distinction and regulated also by the proper Officer to the Standards.

Article 20th "Whether or not we should apply for a Charter incorporating "a select number of Citizens on some good and approved plan, with power "to make Bye Laws decide civil and Criminal causes under certain restric- "tions, whether under the stile and title of Recorder, Mayor Alderman, "and Common Council of the City and County of Quebec and the Precincts "and liberties thereof, or under any other Denomination?

Observation The wretched state of the Police of the City of Quebec is too obvious to need Explanation: The Regulations that are made however useful and proper are but little attended to, and ill executed, the Magistracy is unconnected without a head, and without inferior Officers to put the Laws in force, their mandates want efficacy and do not enforce subordination in the people.[1]

There is, there can be no remedy but a chief Magistrate with subordinate Officers to put the Laws in force and keep up peace and good order in the Towns.—A Charter to incorporate the City of Quebec for the above and other good purposes would, We humbly apprehend, be attended with salutary effects.

Article 21st "And a like Charter for the City of Montréal."

Observation It appears to us that the City of Montréal being under the like predicament with that of Quebec, would also be much benefited by a like Charter, of which however they are the proper Judges.

Article 22d "The establishing of Schools and Seminaries for the Education of Youth, from those funds now unemployed as well in England as in this province, and particularly a respectable College in this City, with able Professors, and erecting free Schools at convenient distances throughout this extensive province, for the purpose of opening and enlarging the

[1] During the session of 1777 an Ordinance was passed, 17 Geo. III., cap. 15, "To empower the Commissioners of the Peace to regulate the Police of the Towns of Quebec and Montreal for a limited time." The preamble declared it impossible, owing to the advanced state of the session, to form a permanent Police for these towns, hence only very general and indefinite powers were granted. Nevertheless this ordinance was simply renewed, without amendment, every two years, until 1791.

human mind, conciliating the affections of all his Majesty's Subjects, and having a tendency to render this a happy and Flourishing Province." Observation The Education of Youth in this Province except in the Cities where indeed the Schools cannot be boasted of, is confined altogether to the Female sex, there are some five or six small indifferent schools dispersed thro' the Country kept by Nuns called Sisters of the Congregation, for instructing Girls, but not a single one that deserves the name for educating Boys, hence all the Inhabitants are unhappily ignorant of the use of Letters, and incapable of reading or writing, a situation truly lamentable!

We are informed that the Fund in England piously and generously contributed for the propagation of Christian knowledge in foreign parts, is in a great measure now unemployed,[1] from the circumstance of the United States of America having separated themselves from Great Britain.

We are also informed that the society of Jesuits is shortly to be suppressed and dissolved and their property and Estates vested in the Crown.[2]

We understand that the Estates granted to the Jesuits were for the purpose of building a College and endowing it and the Revenues arising therefrom to be applied to the Education of youth, and that before the conquest of Canada a very considerable number of Students were constantly educated in that College. Such being the deplorable state of this Country with respect to useful Learning, and such the ample provision made as a remedy to so great a misfortune as a state of ignorance confessedly is.— We have humbly to recommend that Application be made thro' the proper Channel for a participation of the first mentioned fund, and we humbly trust that His Majesty out of his paternal goodness will be graciously pleased to direct that the Jesuits Estates and the Revenues thereof, may be applied to the Endowment of a College or University in this City with able Professors for the Education of the Youth of all British America and for building and maintaining Free Schools with proper Masters for teaching the English Language and other Branches of Education throughout this Extensive Province on an approved liberal Plan. Posterity requires at our hands our Endeavour to procure them so great a blessing, which we supplicate both on their behalf and our own.

We have avoided making Observations on that important part of the Trade of this Province carried on with the Indians in the Interior parts thereof, as the Merchants in Montreal by being particularly engaged therein, are more capable of giving the Honble Committee information of the needful regulations and to their report, on that and other Subjects we refer.

In general and upon the whole of the Observations which we have humbly offered, may be collected, the utter impossibility of governing

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[1] Assistance from this fund was soon afterwards extended to Canada for religious purposes.
[2] The disposal of the Jesuits' Estates was a matter of much interest and discussion at this time. See note 1, p. 857.

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this Province as a British Colony and promoting its prosperity without a power existing some where of levying inland Taxes and providing for useful regulations. This Consideration We hunbly submit to the Hon$^{ble}$ Committee of Council and, refer them to the Petition we have the honor to transmit to His Majesty and both Houses of Parliament two years ago for Granting a House of Assembly to His Majesty's faithful Subjects of this Province.[1] A Copy whereof accompanies this Report.

Quebec 5$^{th}$ January 1787.

(signed) Geo Allsopp
James Johnston
Robert Lester
S. Fraser
Mathew Lymburner
Will. Goodall
John Young.

Sirs,

As a Committee appointed by the Merchants of Quebec, We have the Honour to inclose our report, agreeable to your Letter of the 15$^{th}$ of November last.

& are with great Respect
Sirs
Your most obedient
& most humble Servants

(signed) Geo: Allsopp
James Johnston
Robert Lester
S. Fraser
Will. Goodall
John Young
Mathew Lymburner

Quebec 6$^{th}$ January
1787.

The Honb$^{le}$ F. Levesque Edw$^{d}$ Harrison,
John Collins George Pownall & W$^{m}$
Grant Esq$^{rs}$
Committee of Council on
Commercial Affairs

[1] See petition of Nov. 24th, 1784, sent to Britain early in 1785, p. 742.

COPY OF A PETITION TO HIS EXCELLENCY LORD DORCHESTER, FROM HIS MAJESTY'S NEW SUBJECTS RESIDING AT QUEBEC.[1]

A Son Excellence Le très Honorable Guy Lord Dorchester, Captaine général & Gouverneur en Chef des colonies de Québec, Nouvelle Ecosse, et Nouvelle Brunswick, & de leurs dépendances, Vice Amiral d'icelle, Général & Commandant en Chef de toutes les troupes de Sa Majesté dans les dites colonies, & dans l'Isle de Terre-neuve &c &c &c.

L'Humble Supplique des Citoyens canadiens de Québec.

Qu'il plaise à Votre Excellence,

Nous Citoyens canadiens de la Ville de Québec, prenons la liberté de faire à Votre Excellence, nos tres humbles représentations sur un Objet qui intéresse essentiellement notre tranquilité & le bonheur de cette Province.

Une juste & précise éxécution de nos loix civiles est notre Voeu, & les altérations qu'elles ont Souffertes & qu'elles pourront encor souffrir font nos craintes & nos peines. Ces loix ont établi les titres de nos biens & de nos familles, au nombre de cent Vingt mille Ames, qui forment les dix neuf-vingtiémes de la population actuelle. La capitulation en nous maintenant expressement dans l'entière & paisible propriété & possession de nos biens nobles & innobles, meubles & immeubles, nous a nécessairement conservé ces loix civiles, qui les définissent; & l'un des articles de l'acte du Parlement de la quatorziéme année du regne de Sa Très Gracieuse Majesté, considérant avec justice ce pays comme conquis, nous les a si clairement accordées, qu'il ne doit y avoir dans les cours de Justice aucun doute qu'il ait sous-entendu d'y introduire, en outre, d'autres loix qui n'ont jamais été publiées en cette Province, puisque leurs plus cèlebres commantateurs déclarent qu'elles n'ont aucune force en Pays conquis & déja habités. Nous ne pouvons même imaginer que l'acte du Parlement qui nous accorde nos Propriétés & ces loix, ait entendu autoriser des altérations réiterées qui détruiraient leurs principes fondamentaux, ou méler avec ces loix d'autres loix, soit générales, soit particulières qui ont des principes differents & qui sont peu convenables à ce pays, dans la Vue de favoriser une certaine classe d'individus seulement; parceque du mélange de diverses loix, en un même pays, il ne peut résulter qu'une confusion, la désunion entre les Sujets & des incertitudes ruineuses aux familles. L'Altération de nos loix civiles, coutumes & usages mérite la plus grande modération & les précautions les plus importantes. Ces loix sont simples, claires, connues & Justes, même pour le Commerce, puisqu'elles favorisent beaucoup le prompt recouvrement des dettes, la Justice & l'égalité entre les créanciers. Elles consistent en ordonnances que les Rois n'ont voulu faire, lorsqu'elles touchaient aux

[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 7. See also Q 27-1, p. 315. The text given here for both the French original and the English translation is from the original as presented to Council. This petition was not submitted to the Committee, nor did it form part of their Report. It was sent directly to Lord Dorchester and by him presented to the Legislative Council, on Feb. 1st, 1787, along with the various reports and other papers. See journals of the Legislative Council, vol. E, p. 6; also Q 27-2, p. 575.

propriétés & aux droits de Citoyens, que sur les résolutions des états; C'est à dire *les trois ordres du peuple.* Nos Coutumes n'ont aussi été rédigées par écrit que de cette manière & leur rédaction n'a été faite que sur les résolutions des mêmes *Etats.* C'est pourquoi les lettres patentes de la dernière redaction les déclarent & garantissent expréssement, comme loi & édit, perpètuelles & irrévocables; et que l'ancien gouvernement n'a, pendant plusieurs siécles fait que peu d'ordonnances, dont aucune ne donne atteinte à ces loix. Telles sont les loix coutumes & usages pour nos droits réels & personnels dont les anciens & notables, même les Nouveaux canadiens qui sont en cette Province, sans distinction de naissance, ont d'accord entre Eux demandé l'exacte éxécution à Sa Majesté en la suppliant de rémédier à l'Etat actuel de cette Province. Nous Supplions donc très respectueusement Votre Seigneurie, de vouloir bien ne donner aucune Sanction à ce qui tendrait à détruire les principes fondamentaux des loix, coutumes & usages qui réglent nos propriétés ou qui voudraient introduire d'autres loix attendu que toutes innovations en loix ne devraient se faire qu'avec les mêmes précautions qui les ont etablies.

L'Ancienne & constante protection que Votre Excellence a bien voulu accorder à nos droits les plus précieux, nous assure de celle qui doublera notre reconnaissance & nos Voeux pour Votre conservation & Prospérité.
Québec le 19e Janvier
1787.

N.B. The foregoing Petition was signed by 345 Persons—
J Williams. C.C.

(*Translation of the foregoing Petition*).

To His Excellency the Right Honourable Guy Lord Dorchester Captain General and Governor in Chief of the Colonies of Quebec Nova Scotia and New Brunswick, and their dependencies Vice Admiral of the same; General and Commander in Chief of all His Majesty's forces in the said Colonies and in the Island of Newfoundland &c, &c, &c.

The humble Petition of the Canadian Citizens of Quebec.

May it please Your Excellency,

We the Canadian Citizens of the Town of Quebec take the liberty most humbly to offer to Your Excellency our Representations upon a subject which essentially concerns our tranquility, and the happiness of the Province.

A just and exact execution of our Municipal Laws, is our wish, and the Alterations they have suffered, and may suffer, are our apprehensions, and our afflictions. Those Laws have Established the titles of our Estates and of our families to the number of a hundred and twenty Thousand Souls, who compose nineteen twentieths of the whole of the population. The Capitulation, by expressly granting to us the full and quiet right and possession of our Estates, Noble and innoble, personal and real, has

necessarily preserved to us, the Municipal laws which define them. And one of the Sections of the Statute of the 14th year of the Reign of His Most Gracious Majesty justly considering this Country a conquered one, has so clearly allowed them to us, that the Courts of Justice ought not to entertain a doubt that it was meant to introduce any other laws, which have never been promulgated in this Province, for their most celebrated Commentators declare that they have no force in Countries which are Conquered and already inhabited. We cannot even conceive that the Act of Parliament which allows us our possessions can be understood to Authorize reiterated Alterations, which would subvert their fundamental principles; or to mix with those laws, others, either general or particular, which differ in principle, and are but little adapted to this Country, with an Eye to indulge a certain class of Individuals only: Because from a mixture of different Laws, in one and the same Country, nothing but Confusion, a Disunion among the people, and an uncertainty destructive to families, can result. Alterations in our municipal Laws, Customs and usages, require the greatest moderation and circumspection. These laws are clear, simple, well understood, and just, even with respect to Commerce, for they greatly favour the speedy recovery of debts, they are equitable and promote equality among Creditors. They consist of Ordinances, which the Sovereigns, in cases concerning property and civil rights, would not issue without the Resolves of the Estates, that is to say, the three orders of the people. Our Customs also, were only committed to writing, in that manner, and the digesting of them was done upon the Resolves of the same Estates. Therefore it is, that the letters patent of the last Redaction expressly declare and ratify them as Law and Edict, perpetually and irrevocably; and that the former Government, for Ages, made but few Ordinances, not one of which struck at those Laws. Such are the Laws, Customs, and usages, in support of our Rights, real and personal, which the elder and Chief men, and even the younger Canadians, who live here, without distinction of birth, have agreed among ourselves to demand the exact execution of, from His Majesty; supplicating him to apply a remedy to the present state of the Province.

We therefore most respectfully intreat Your Lordship, to forbear giving your sanction to anything that may conduce to subvert the fundamental principles of the Laws, Customs, and Usages, which govern our properties, or introduce other Laws; seeing that all innovations, in matter of Law, should be done with the same Circumspection as obtained at their Establishment.

The firm protection which Your Excellency was pleased to give, heretofore, to our most precious Rights, assures it to us at present. It will double our Obligations, as it will our prayers for your preservation and prosperity.

Quebec 19th January
1787.

The Petition was signed by 345 Persons.

J. WILLIAMS C. C.

SESSIONAL PAPER No. 18

LETTERS FROM THE COMMITTEE OF COUNCIL ON COMMERCE AND POLICE TO THE MERCHANTS OF MONTREAL.[1]

QUEBEC 13th November 1786.

Gentlemen,

His Excellency Lord Dorchester in Council having been pleased to appoint Us to be a Committee to take into consideration and to report to His Lordship (preparatory to the meeting of the Legislative Council which will be on the fifteenth of January next) the state of the External and Internal Commerce and the Police of the Province; with such improvements as may be requisite to make therein.

We have therefore to request Your sentiments with all convenient speed, on objects so interesting to the Province at large, and to Montréal in particular.

We have the honor to be,
Gentlemen
Your most obedient
most humble Servts
(signed) Francis Levesque, Edward Harrison, John Collins, George Pownall, William Grant.

Addressed to,

Magistrates:
Neven Sivestre
E. W. Gray
St George Dupré
James McGill
Pierre Guy
James Finlay
J. S. Goddard
Pierre Messiere
Pierre Fortier
Hertel de Rouville
John Campbell
Edward Southouse
Alexander Fraser
Jacques Le Moine
Benjamin Frobisher
Stephen De Lancy Esqrs

& to,

Messrs Jacob Jordan
Isaac Todd
Forsyth, J. Blondeau
P Perinault
Richard Dobie
J. Chaboillet
William Macbeth and
William Pollard.

Merchants.

[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 201-3. See also Q 27-1, p. 323.

ANSWER TO THE FOREGOING LETTER.

MONTREAL 23d Novr 1786.

Gentlemen,

Your letter of the 15th Instant was immediately Communicated to the Gentlemen to whom it was addressed, when we had the honor to be appointed by them as a Committee to examine into, and report upon the Objects of your enquiries but in matters of such high importance to the general welfare and prosperity of the Province at large, & to this District in particular, we think it a duty incumbent upon us to call in & collect the general voice of our Fellow Citizens, which we shall do without delay, and report to you their sentiments and ours thereon, in time for your Consideration previous to the meeting of Council the 15th Janv next.

We have the honor to be,
Gentlemen,
Your most obedient
most hum. Servts

(signed)

James McGill
Th. Perinault
Pre Meziere
Jacob Jordan
Benjn Frobisher
Pre Guy

To The Honble
Geo. Pownall
Willm Grant
F. Levesque
Edwd Harrison
John Collins
Esqrs

REPLY.

QUEBEC 8th Decr 1786.

Gentlemen,

We duly received your Letter of the 23rd Novembr. We are perfectly of Opinion, and certainly understood, altho' our Letter was not nominally addressed to every Gentleman in Montréal that the Voice of the Merchants and principal Citizens should be collected on Objects so interesting to the whole, as those now in agitation

We are happy to observe that Gentlemen of your experience and knowledge have been chosen as a Committee for that purpose; the sooner

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you can effect it and transmit your collective sentiments the better, as the time draws near when we would wish to make up the Report required of Us.— We have the honor to be,

Gentlemen
Your most Obed & most
humble servants.

Edwd Harrison
(signed) John Collins
Wm Grant
George Pownall

Addressed to
James McGill
Pierre Meziere
Jacob Jordan
Benjn Frobisher
Pierre Guy &
J. Perinault—Esquires.
Montreal.

## REPORT OF THE MERCHANTS OF MONTREAL BY THEIR COMMITTEE TO THE HONORABLE COMMITTEE OF COUNCIL ON COMMERCIAL AFFAIRS AND POLICE.[1]

"The Establishment of a Chamber of Commerce duly incorporated"[2]

Observation.

However beneficial to Trade & Commerce institutions of this nature be considered, yet we are of opinion that the same would prove ineffectual & inexpedient at this time considering the connection that subsists more or less among the Trading people of this place.

Holding Terms and the Abolition of Circuits

From the frequency of holding Courts, and from the mixture of French and English Laws, great delays, procrastinations, and incertitude are experienced in the decision of suits to remedy which we are of opinion, that Terms should be established; Four in the year to sit from day to day for fourteen days each term, which would be sufficient and prove more eligible for the dispatch of business, than those continual Courts. However for a time it might be proper to permit the Court of Common Pleas to sit once a fortnight for the decision of causes to the amount of Ten pounds, We are likewise of Opinion, that the Circuits should be abolished. It's an itinerant Court that carries no respect, impresses the Inhabitants with

[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 204; See also Q 27-1, p. 326. Much the same matters are discussed as in the Report from the Quebec Committee. As in that report, there are only certain sections which relate more or less directly to constitutional matters and only these are reproduced. The portion here given begins at p. 239 in vol. E, and p. 383 in Q 27-1.

[2] The merchants of Quebec were those chiefly interested in the development of this proposal. See the "Plan for the establishment of a Chamber of Commerce for the City and District of Quebec." p. 692.

no awe of Justice, and proves of no relief whatever to the distant parts of the District. The end for which they were intended.[1]

"The present Establishment of Appeals in Commercial causes"
Observation.

The same uncertainty that has hitherto prevailed in the Courts of Justice, has made its way into the Court of Appeals, probably through the disadvantage it has long labor'd under, for want of a Gentleman bred to the science of the Law, presiding or sitting in it to point out to the other Members, the errors in the proceedings if any, and to explain the Law; indeed without any imputation on the Judges it is much to be lamented, that regular bred professional Men do not preside in all the Courts of Justice in the Province, to the want of which we may impute the great delays in the decisions of suits, in all the Courts but more particularly in the Court of Appeals, which has proved a great and real grievance to this District: If the Court of King's Bench was restored to its ordinary and former Civil Jurisdiction and Powers, we conceive it would remedy the evil complained of; in which case we would humbly request that the Chief Justice should hold two terms in every year at Montreal for the purpose of hearing and determining all civil suits that might be brought before him, either by Original, or on Appeal from the inferior Courts. This mode would prevent the great expence now attendant on Appeals to Quebec, and prove infinitely more agreeable and satisfactory to the Suitors, many of whom rather put up with the decision of the Inferior Courts, than go to the great expence incurred by an appeal on the present footing.

"The Establishment of a Court of Chancery."
Observation.—A Court of Chancery would be a very desirable object if it could be so constituted as to grant relief under the rigour of legal decisions with convenient dispatch and on moderate fees.

"On a Register of all Deeds"
Observation.

Frauds having been committed by Debtors mortgaging their Lands to different Creditors, also much inconvenience arisen to Purchasers of Lands who have no effectual means of discovering incumberances on them. There being likewise a considerable degree of obscurity in most transactions with regard to real property: We offer as a means of better ascertaining the Rights of Proprietors and Creditors, and avoiding Lawsuits.—That there be erected at Montreal an Office for the registering all Deeds in future which affect real property within the District.—That the Fees of such Office be moderate as possible.—That no such Deeds be valid in future unless passed by a Notary and so registered.—Considering the illiterate

[1] See Report on Courts of Justice, p. 874.

state of the Bulk of the Inhabitants,—That it shall be incumbent under a high penalty on the Notary who may pass any such Deed, to have the same registered in the proper office, and this within a short limited time, and before he delivers any Copy to the party.[1]

"On a Bankrupt Law"

Observation.

A Bankrupt Law and equitable rules for the distribution of the property of persons failing in Trade, is become essentially necessary for the security of the fair Trader and for the prevention of those Frauds there is too much reason to believe are daily practised. We are therefore of opinion that such Law should ascertain what act of a Merchant amounts to an Act of Bankruptcy & should compel the insolvent Debtor, in that situation to a surrender of his Books, papers, and effects, on Oath for the benefit of all his Creditors, and to answer such questions to his Trustees or Creditors as they may put to him relating to his business. In which Law, the Rights of the Wives and Children of all persons concerned in Trade or Commerce to the real or personal Estate of such Bankrupt should be ascertained. A Distinction should be made in the Treatment of a fraudulent, & unfortunate Bankrupt; The former should be punished exemplarily, yet not cruely, least the end be defeated; and the latter entitled to a discharge, provided three fourths of his Creditors both in number & value consent.

The contradictions in the Judgements of Law on this subject mark the strongest injury to the commercial Interest, therefore require a speedy & effective remedy.

Police

"The building a Goal in the District of Montreal"

There can be little doubt, that many objects of police will be best provided for, by means of incorporating the Town of Montreal by Charter, But there are some, which as they concern the District at large, require to be more particularly adverted to.

The want of a proper Goal for this District has long been complained of and at divers times has been represented, by different Grand Juries, as well at the Courts of Oyer & Terminer, as at the inferior Courts of Quarter Sessions, but hitherto no remedy has been applied. The House which at present serves for a Goal consists of four very small Rooms in which are frequently confined promiscuously persons of different sexes and for very different degrees of crimes; The unfortunate Debtor cannot have a Room to himself, nor can the Malefactor when preparing for another World be accommodated with a place of retirement to deprecate the wrath of the offended Deity. The insufficiency of the goal in point of security occasions a Guard of Soldiers to be kept in the lower part of it, and even

[1] See note 5, p. 904.

with that precaution many atrocious Offenders have escaped, insomuch that the Sheriff of the District has refused to confine Debtors, unless the Prosecutor agreed to take upon himself the risk of an escape.

The situation of this insufficient Goal heightens, the sufferings of those persons whom the Law dooms to imprisonment, offends every passenger in the warm season and is a Nuisance to the Neighbourhood, being without those conveniences requisite to carry off the Filth accumulated by want of them.

We propose as the means of obtaining a proper Goal, that an Assessment be laid on the District, for the purpose of raising a fund adequate to the building of the same, if the present Legislature is competent thereto.

"Whether or not we should apply for a Charter incorporating a select "number of Citizens, on some good and approved Plan, with powers to "make Bye Laws, decide civil and criminal causes under certain restric- "tions, whether under the stile and Title of Recorder, Mayor, Alderman & "Common Council of the City & County of Quebec, and the Precincts and "Liberties thereof or under any other denomination."

And a like Charter for the City of Montreal"

Observation.

The bad state of the Police in this Town calls loudly for reform, and tho' Government in its wisdom, have attended thereto by the appointment of an Inspector of Police; yet we are sorry to observe that the appointment has in no wise proven adequate to the intent. And by experience we find, that the exertions of the Magistrates are not sufficient to remedy the evil complained of, We therefore beg leave to point out as the only Remedy that can be applied with effect, the incorporating by Charter a select number of the Citizens of Montreal on a good and approved plan, with such powers and Privileges, as are usually granted to Corporations; for the purpose of police only. And we further beg leave to request, that in case the Honorable Council should approve of this mode, and Government incline to grant the same. That it be recommended to His Excellency Lord Dorchester to bestow on the Corporation such Lots of Ground and Houses, the property of the Crown within the Town and Suburbs of Montreal as Government have not present use for, in order to the same being applied, towards the erecting Schools, workhouses, and other Establishments of Public utility.

"That a Regulation is necessary to prevent a greater Number of Licences "being granted for the sale of Liquors than are necessary for the use of "the Town & Country."

Observation

The many complaints arising from the great number of disorderly public Houses call the attention of the Legislature: There is infinitely too

many of them both in Town & Country; they are the bane of Industry, and only tend to debauchery & Riot, it is much to be wished that a fewer number of Licenses were granted, and those to persons of good Character only.

"A Regulation to prevent the erection in future of Wooden Buildings or "Fences within the City of Montréal."

Observation

As the Legislature has carefully attended, by a wise Law,[1] to prevent the dreadful accidents that might happen by fire in the Towns of this Province, we must beg leave to offer an Amendment that would be of real service, to prevent the Spreading of fire in this Town, that is by enacting that no wooden fence or building of Wood of what description soever, be erected in the Town of Montréal in future under a severe Penalty.

"The establishing of Schools and Seminaries, for the Education of Youth "from those funds now unemployed, as well in England as in this Province, "and particularly a respectable College in this City, with able Professors, "and erecting Free Schools at convenient distances throughout this exten- "sive Province, for the purpose of opening and enlarging the human mind, "conciliating the affections of all His Majesty's Subjects and having a "tendency to render this a happy & flourishing Province."

Observation

There remains for us to advert to a subject which we consider as the surest and best means of obtaining a chearful and dutiful obedience to the Laws, and Government, from Subjects in general, and that is by establishing throughout the Province at proper distances, Public Schools for the Instruction of Youth. We hardly know of a single School in any Country part of the District for teaching Boys, and it is to the zeal of the few Sisters of the Congregation, that we are indebted for all the little which is taught to Girls throughout the Country. The Captains of Militia who are frequently called upon to enforce Laws and Orders, are so illiterate, that not one in three can write or even read, the consequence is confusion and disorder, and frequent suits and Complaints between them and the Militiamen. It is not for us to point out the best plan for Establishing those Schools, but having understood that all the Estates which the Jesuits possess in this Country were granted to them for the purposes of Establishing proper Seminaries of Learning and that those Estates are likely to revert to the Crown, we humbly conceive that they could in no way be better employed than in that for which they were originally intended and granted. There may be further some unappropriated Funds in England for

[1] Referring to the Ordinance of 17 Geo. III., cap. 13, "For preventing accidents by fire." This applied to Quebec, Montreal and Three Rivers. See Ordinances of Quebec, 1763-1791, p. 841.

similar purposes, now that the States of America formerly Colonies of Great Britain are separated from her Dominion, which we would recommend to be applied for through the proper Channel.

Upon the whole of the Observations which we have humbly offered, may be collected the utter impossibility of promoting the welfare of this Province as a British Colony under the present System of Government This consideration we submit to the Honorable Committee of Council, and refer them to the Petition we had the Honor to transmit to His Majesty and both Houses of Parliament two years ago, for granting a House of Assembly to His Majesty's faithful subjects of this Province, a copy of which accompanies this Report.[1]

(signed) Jacob Jordan
James M^cGill
P^re Guy
Benj^n Frobisher
M^le Blondeau
A. Auldjo
P. Bouthillier
Rich^d Dobie
Th. Perinault
John McKindlay
James Walker
Thomas McCord

Montreal 23^rd January 1787.

COPY OF A LETTER ACCOMPANYING THE ABOVE REPORT.[2]

Montreal 23^d January 1787.

Gentlemen,

Having now finished our report on the objects on which you were pleased to request our sentiments, and having read the same to a numerous Assembly of old and New Subjects in both Languages without one dissenting Voice being heard ; we take the earliest opportunity of transmitting the report, and shall be happy to learn that our Opinion on Subjects so interesting coincide with yours.

It would have afforded us much satisfaction, had it been in our power to hand you the Report at a more early day ; the length of the report with other Business of a pressing nature, which require the Attendance of several of the Members of our Committee, will we hope apologise for the delay.

We reiterate our sense of the honor you have done us in Consulting with us on this occasion, and remain with the greatest respect

Gentlemen

Your most obedient and very humble Servants

(signed)
P Boutheilier
Th. Perinault
John M^cKindlay
James Walker
Thomas M^cCord
Jacob Jordan
James M^cGill
P^re Guy
Benj^n Frobisher
M^le Blondeau
A. Auldjo
Rich^d Dobie.

[1] Referring to the petition of Nov. 24, 1784, to which were appended, in separate lists, the signatures of those from Quebec, Montreal and Three Rivers. See p. 746.

[2] Canadien Archives, Q. 27-1, p. 409.

SESSIONAL PAPER No. 18

## COPY OF AN ADDRESS TO HIS EXCELLENCY LORD DORCHESTER FROM HIS MAJESTY'S NEW SUBJECTS RESIDING AT MONTREAL.[1]

A Son Excellence Le tres Honorable Guy Lord Dorchester capitaine général et gouverneur en chef des Colonies de Quebec, Nouvelle Ecosse, et Nouveau Brunswick et leurs dépendances, Vice amiral D'icelles général et commandant en chef de toutes les troupes de Sa Majesté dans les dittes Colonies et dans l'isle de Terreneuve &ª, &ª, &ª.

Qu'il plaise à Vôtre Excellence

Dans un temps, où l'arrivée de Vôtre Seigneurie sembloit ne devoir faire penser, aux Anciens et nouveaux Sujets de Sa Majesté, qu'a se féliciter réciproquement de cet heureux évenement, dans un temps où nous pensions qu'il y auroit—un accord mutuel à se réjouir des douceurs d'un Gouvernement heureux: dans un tems enfin où nous croions la tranquilité rétablie, les anciens Sujets Revenus d'un sisteme qu'un opposition générale des loiaux Sujets canadiens devoit leurs faire regarder comme inadmissible dans un païs où les opposants, par droit, nombre, fortunes, et propriétés Doivent emporter la ballance; C'est avec La Surprise la plus Grande que nous Voyons les nouvelles Demandes des anciens sujets de Sa Majesté qui ne tendent à rien moins qu'a bouleverser les loix Fondamentales des nouveaux, à les anéantir, et par lã leurs propriétés; cette coñotion seroit Allarmante, si les loyaux Sujets canadiens de Sa Majesté, n'étoient persuadés qu'elle a les Vuës Les plus favorables pour son peuple canadien. que Lorsqu'elle verra par l'entremise de Vôtre Seigneurie, au pied de son auguste trône, l'opposition générale et formelle de ses Loyaux Sujets canadiens aux demandes injustes et outrées de ses anciens Sujets. que quand Nôtre très gracieux Souverain sera instruit que tout un Peuple qui n'a jamais cessé de lui être fidele, se réunit pour réclamer Sa justice et son équité, pour lui conserver ses loix municipales; ses loix sur les qu'elles sont fondés ses biens, fortunes, et propriétés; ses loix que le droit Des gens assure, que La capitulation a promise, qu'une proclamation a solemnellement ratifiée, et que le bill émané de Son Auguste Parlement dans La quatorzieme année de Son Regne[2] bienfaisant, a maintenuë, et nous Guarantit: que,

[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 16. See also Q 27-1, p. 410 This also is taken from the original submitted to Council with the translation following. Like the petition from Quebec (see p. 910), this does not belong to the list of papers forming the Report of the Committee on Commerce and Police, but was addressed to the Governor and by him presented to the Legislative Council on Feb. 12th,

[2] The Quebec Act. See p. 570.

quand Sa très Digne Majesté, Daignera promener ses regards sur cette étenduë de paÿs qu'habite un peuple qui désire le lui conserver, et qu'ensuite elle comparera cette quantité de personnes qui lui sont si fidèlement attachées, Les biens, et les propriétés de tant d'individus dont-on veut renverser les principes fondamentaux, Avec le nombre si petit des anciens Sujets, et de si peû de propriétés; ne devons nous pas espérer Que Nôtre très Gracieux Souverain, bien loin d'acquiescer à des demandes Aussi injustes, affermira encore et rendra plus stables les loix constitutionnelles et municipales de ses fideles et Loyaux sujets canadiens.

Nous Supplions Votre Seigneurie de vouloir bien jetter un Regard sur les deux adresses[1] envoiées cidevant pour être mises au pied du trône auguste De sa Majesté, dont nous avons l'honneur de Vous transmettre les copies; de les considérer comme le Voeu unanime, et invariablede la nation: & que, par vôtre illustre protection, Notre très Gracieux Souverain veuille bien y avoir référence; nous espérons que Votre Excellence n'aura aucun égard à ces demandes, de chambre d'assemblée; de Chartes D'incorporation, dont le but est a peu près le même; d'un enrégistrement des contrats; de Gréniers, et marchés publics pour les Grains &ª; d'un Coñerce avec Vermont; de ces innovations pour les doũaires, hypotẽques, &ª ces points étant assez clairement expliqués dans notre loi; le tout Ne tendant qu'a la Sapper, et nous paroissant Contraire et prejudiciable à l'avantage de La province, que tout autres articles de ces demandes qui ne regardent pas le commerce seul, méritent un désaveu de notre part, comme opposés au bien, aux interests, au droits et aux Priviliges les plus sacrés des divers états qui composent cette province, et à qui, sans Daigner les consulter, on veut imposer des loix dont eux seuls sentiront tout le poid.

Nous osons nous flatter que Votre Seigneurie voudra bien faire valoir notre opposition par tout ou besoin sera; Qu'elle voudra bien l'apuier de tout son crèdit; Ses connoissances dans la province des sujets qui l'habitent la rendent Plus capable que tout autre de faire, avec cette intégrité, et cette impartialité, qui en tout temps, ont charactérisé Votre Excellence, un raport fidele, et exact des Vrais Sentiments de notre nation; et de pointer cette distinction que l'on doit mettre entre la futilité des demandes, et les droits réels des opposants; Et c'est avec La confiance la plus sincere que nous attendons encore aux marques de cette protẽction bienfaisante, si souvent réiterée à notre égard, qui fait, que, sous un Gouvernement cheri, Le Plus

[1] Referring to the memorials in opposition to the petition from Quebec and Montreal in 1784. See pp. 754 and 762.

Auguste des Roix est adoré, et ne peut qu'augmenter notre amour en se faisant Représenter parmi ses loyaux Sujets canadiens, par Votre Seigneurie, pour La prospérité de laqu'elle nous ne cesserons de prier.

Montreal Le 3meFevrier 1787.

N. B. The Address was signed by 283 persons.

J. WILLIAMS
C. C.

(*Translation of the foregoing Petition.*)

To His Excellency The Right Honourable Guy Lord Dorchester, Captain General and Governor in Chief of the Colonies of Quebec, Nova Scotia and New Brunswick, and the dependencies thereof, Vice Admiral of the same; General and Commander in Chief of all His Majesty's forces in said Colonies and the Island of Newfoundland &c, &c, &c.

May it please Your Excellency,

At a period, the epoch of Your Lordship's arrival, when it might be expected that all His Majesty's Subjects, indiscriminately, would felicitate each other upon account of so happy an event: At a period when we conceived we should mutually rejoice at the blessings of an indulgent Government: At a period, when we thought that disturbances had ceased, and His Majesty's antient Subjects had retracted from a System, which upon a general opposition on the part of His Majesty's faithful subjects the Canadians, they should have considered as inadmissible into a Country, where the Opponents in consideration of Rights, in point of Number, of Wealth, and of property, preponderate : It is with the greatest astonishment We hear of the new requisitions of His Majesty's Antient Subjects; having a tendency to nothing short of a Subversion of the fundamental Laws which Govern His Majesty's new Subjects, to an annihilation of them, and by that means of their Estates. This Commotion would appear alarming indeed, if His Majesty's faithful Canadian Subjects were not fully persuaded that His Majesty looks down upon his Canadian People with the most benignant Eye. When His Majesty, by your Lordship's intervention, sees at the foot of his sacred throne, the General and Specific opposition made by His Majesty's Canadian Subjects to the unjust and strange demands of His Antient Subjects ; when our most Gracious Sovereign is informed that the whole of a people who have never discontinued their fidelity to him, are uniting together to implore his Justice and his Equity for continuing to them their Common Law; a Law whereupon are founded their

Estates, their Fortunes, and their property; a Law which the right of Nations assures to them ; which the Capitulation has promised to them; which a Proclamation has solemnly ratified; and which an Act of His Majesty's August Parliament passed in the fourteenth year of His benign reign has affirmed and warranted to us ; When His Most Gracious Majesty condescends to cast an Eye upon this extensive Country, inhabited by a people, desirous of preserving it to him, and then compares the number of persons who are so faithfully attached to him, their Estates and Possessions (whereof the fundamental principles are attempted to be Subverted) with the fewness of antient Subjects, and their so little property; Have we not to hope that our most Gracious Sovereign will further strengthen, and render still more durable the constitutional and Municipal Laws of His faithfull and Loyal Subjects of Canada ?

We request Your Lordship's attention to the two Addresses heretofore sent to be presented at the foot of His Majesty's sacred Throne, whereof we have the honour to transmit Copies to You; to consider them as the unanimous and immutable wish of this Nation, and by your noble Interposition, that our most Gracious Sovereign will deign to refer to them.

We hope Your Excellency will disregard those demands of a House of Assembly, a Charter of Incorporation (whereof the design leads nearly to the same end) a Registry of Deeds, Store houses, public markets for Corn, &c; of a Commerce with Vermont, of Innovations with regard to Dower, Hypothecations &c ; These points are clearly enough explained in our own Law : All which only tends to strike at the foundation of it, and appearing to us repugnant and hurtful to the Interests of the Province. Every other article of those Demands which does not relate to Commerce *alone*, merits a disavowal on your part, as being contrary to the Welfare, the Interests, the Rights and Priviledges (the most sacred) of the different Estates whereof this Province is composed; and for whom, without condescending to consult them, Laws are to be imposed, the burthen of which will fall on them *only*.

We presume to flatter ourselves that Your Lordship will improve our opposition wherever it shall be found necessary that you will support it with all your influence. Your knowledge of the people of this province, enables Your Lordship, preferably to all others, to draw up a faithful and exact report (with that integrity and impartiality which have, at all times Characterised Your Excellency) of the true sentiments of our Nation ; and to point out that distinction which ought to be observed between the futility of the Demand and the real Rights of the Opponents.

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It is with the sincerest confidence, we again look up for instances of that beneficent protection so often reiterated in our behalf, which occasions, that, under an Admirable Government, the most August of Kings is adored ; and it cannot fail of enhancing our love for him, in permitting himself to be represented among his Loyal Subjects of Canada, in the person of Your Lordship, for whose Happiness we shall not cease to pray.

Montreal 3rd February
1787.
The Address was signed by 283 Persons.

J WILLIAMS
C. C.

LETTER, ADDRESSED TO THE MAGISTRATES OF QUEBEC, FROM THE COMMITTEE OF COUNCIL FOR COMMERCE AND POLICE.[1]

Quebec 13th November 1786.

Gentlemen

His Excellency Lord Dorchester in Council having been pleased to appoint Us to be a Committee to take into consideration and to report to His Lordship (preparatory to the meeting of the Legislative Council, which will be on the fifteenth day of January next) the State of the Police of the Province with such improvements as may be necessary to make therein.

We have therefore to request your Sentiments with all convenient speed, on objects so interesting to the Province at large, and to Quebec in particular.

We have the Honor to be
Gentlemen
Your most obedient most Hble Servts

(sign'd) Francis Levesque, Edward Harrison, John Collins, George Pownall, William Grant

Addressed to
Nicholas Cox
J. Tachereau
Pierre Panet
J. Williams
Thos Scott
Peter Stuart
Malcolm Fraser
Jno. Coffin
Jno. Renaud
Nathl Taylor
T. Aylwin
F. Duschenay &
Alexr Fraser Esqrs
Quebec.

[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 272, See also Q 27-1, p. 440.

LETTER FROM THE MAGISTRATES OF QUEBEC TO THE COMMITTEE OF COUNCIL FOR COMMERCE AND POLICE IN ANSWER TO THE FOREGOING LETTER.[1]

Quebec 20th December 1786.

Gentlemen

In compliance with your request to the Magistrates, signified in your Letter of the 15th Ulto We now lay before you what has occurred unto us as requisite for the improvement of the Police, establishing good order, and promoting the general good of the Community.

1st That an extension of the Jurisdiction of Justices of the Peace in certain instances, would render that Office of greater public utility viz[t] By empowering them to convict on their own view persons offending against the Road Ordinance and against the Regulations of the Police of the City of Quebec, and these regulations to extend to the Banlieu or Precincts of the City.

To determine in a summary way all disputes between Habitant and Habitant, concerning fences, Ditches, Watercourses, Damages done by Cattle, Horses, Hogs &c, breaking into inclosures—Imposing a small fine over and above the real damage done.

To settle in a summary way small debts not exceeding forty shillings value.

To settle the assize of Bread at such times and as often as they may think necessary for the benefit of the public.

To confine all Beggars asking Alms or Vagrants idly strolling without a Licence either in the Town or Country.

To Visit all Protestant Schools once every three months.

2.—That a House of Correction, a Work-house and an Almshouse be provided in the City of Quebec.

3.—That every Parish be obliged to maintain its own poor, and that a person or persons in each parish be authorized and empowered to remove interloping Paupers to the Parish where they were either born, or had last gained a settlement, so that no Parish may be burthened with more than its own Poor.

4.—That no Parish Priest, Curate or other Person, give Licence to any poor person to ask alms without the limits of their own Parish.

5.—That so much of the present Ordinance[2] respecting the Covering of Houses with Shingles as limits the time of prosecution for the Offence to ten days,—be repealed.

[1] Canadian Archives, Journal of Leg. Council, vol. E, p. 273. See also Q 27-1, p. 441.
[2] Referring to the Ordinance of 17 Geo. III., cap. 13, "For preventing accidents by fire."

6.—That the pretended ancient usage in Canada, called the Abandon, whereby on the 29th of September annually persons claim a right of pulling down Fences, and Opening Inclosures, as it tends greatly to the Injury of the Farmer, where the Inclosures are laid open, and to the great discouragement of industrious Agriculture, be strictly prohibited by Law.

7.—That the antient Law of the Country prohibiting the subdivision of Farms[1] be revived by an Act of the Legislature, and rules established for the clearing of Fields of Thistles and other noxious Weeds.

8.—That all Sportsmen, Idle persons, and those who walk or ride into the Country be prohibited passing over Fences, and through Fields of Grass or Corn, or removing Rails or Pickets to gain an entrance.

9.—That the Roads to certain distances around the City of Quebec be repaired and kept in good order by the joint Labour of the Inhabitants of the City and the Inhabitants of the Parishes within the prescribed Limits.

10.—That Bridges be built over the River St Charles and other small Rivers on the Public Roads more especially the River St Charles, for the great convenience of both City and Country around from whence a great part of the supplies to the City are brought: The Inhabitants of the Country Parishes frequently lose much time in waiting for a suitable time of the tide to Cross that River, in its present state without a Bridge.

11.—That for the better forming and keeping in good order the public Roads in Winter, the use of Traineaux be prohibited, and Trains only permitted, and these to be constructed with Runners not exceeding four inches in height, the length to be six and an half feet, and the Breadth two feet eight inches to be shod with a strip of Iron lengthways in the middle of the Bottom.

12.—That some fund be established or money appropriated for the payment of Bailiffs and Constables without which Justice cannot be by the Magistrates duly administered, as daily experience evinces.

13.—That a substantial Prison be provided for the district of Quebec, and to contain a sufficient number of Apartments to keep Prisoners separate from each other.

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[1] Referring to the Ordinance of Louis XV. of 26th April, 1745: "Ordonnance du Roi, portant entr' autres choses défenses aux habitants de bâtir sur les terres, à moins qu'elles ne soient d'un arpent et demi de front sur trente à quarante de profondeur." See Edits, Ordonnances Royaux, Déclarations et Arrêts du Conseil d'Etat du Roi Concernant Le Canada. Quebec, 1854: Vol. I., p. 585.

14.—That provision be made for the safe Custody of Criminals, Vagrants, Rogues, Vagabonds &c, in Parishes distant from the Capital, and the public prison for the District.

15.—That an Act be passed by the Legislature respecting Bastard Children ; and Apprentices ; better adapted to the circumstances of this Province than are the Acts of Parliament now in use.

16.—That no person be allowed to practise Physic or Surgery within this Province without producing Testimony of his having been regularly Educated in these professions and without being duly licenced by Authority.

17.—That the Fees of these Physicians and Surgeons who may be authorized to practice be regulated by the Legislature; The high Charges of the Physicians (it is asserted) have deterred many persons, more especially the poor Inhabitants in the Country from applying for relief, even in cases of necessity whereby it is very probable many lives are annually lost.

18.—That the Inhabitants of Quebec be empowered to provide means for paving and lighting the Streets of the City.

19.—That public Schools for educating Youth be established throughout the Province.

These Articles are very respectfully submitted to your judicious consideration by,

Gentlemen,
Your most obedient
and
most humble servants.

(signed) Jn° Coffin
Tho Scott
Malcolm Fraser
Peter Stuart
Juchereau Duchesnay
John Renaud
Thos Aylwin
Nath[l] Taylor

To the Honorable
John Collins
Edward Harrison
Francois Leveque
George Pownall
and
William Grant
Esquires.

SESSIONAL PAPER No. 18

LETTER ADDRESSED TO THE MERCHANTS AT THREE RIVERS FROM THE COMMITTEE OF COUNCIL FOR COMMERCE AND POLICE.[1]

QUEBEC 13th November 1786.

[Letter similar to the one addressed to the *Magistrates of Quebec*, with same Signatures].

Addressed to

Tonnancour Esqr
Aaron Hart
Samuel Sills
Bellefeuille Esqr
La framboise
&
Malcolm Fraser
Three Rivers

AN ANSWER TO THE FOREGOING LETTER.[2]

Three Rivers 28th Decembr 1786.

In consequence of the Minutes of the Proceedings of the Quebec Merchants. We the Subscribers at a late meeting have considered of the following objects, on those subjects of the internal and external Commerce and Police of the Province in general, and Three Rivers in particular and which are universally necessary.

1st—That foreign Molasses should not be imported unless subject to such duty as will bring it to an equal value of Molasses imported from the British Islands.

2nd—The importation of Wine and Fruit directly from Spain and Portugal under certain Restrictions and Rules.

3d—Bounty on Exports including Pot and Pearl Ash.

4th—The improvement of the Fisheries

5th—The improvement of the Wheat and Flower Trade, and establishing Public Markets.

6th—The improvement of the Navigation of the River.

7th—The recovery of debts on the principles of the English Commercial Laws, speedy processes and Additional Laws for the Recovery of small debts which is much wanted at this place, as well as a better Police; The present system being found no ways beneficial to Trade, here being no means for the recovery of small debts, but by waiting the arrival of the Circular Courts twice pr Year, which Courts sitting sometimes at Machiche and sometimes here, have often been attended with many abuses as well

[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 277. See also Q 27-1, p. 447.
[2] Canadian Archives, Journals of Leg. Council, vol. E, p. 278. See also Q 27-1, p. 448.

as total losses: The establishment therefore of a Weekly Court at this place for the recovery of small debts would be of a general benefit.

8th—The Establishment of Appeals and a Court of Chancery

9th—Registering of all Deeds and Mortgages, and to prevent frauds on Mortgages, and that the Original Deeds and Mortgages should be left in the hands of the Proprietors, and not left in the possession of the Notaries.

10th—Some regulations of Law for Bankrupts, to prevent Frauds.

11th—That a Standard should be fixed for Weights and Measures in the Province.

12th—Bringing all Gold coins to one certain weight.

13th—A Tax on all Goods sold at Vendue; Furs and Goods sold by execution excepted.

14th—A Charter for incorporating a select number of Citizens to make Bye Laws, authorized to Commit Felons, and decide civil and Criminal causes, under certain Rules and Restrictions (without the trouble of a Journey to Montréal) and whose power should extend as was formerly done from St Anne to Berthier on this side, and from St Pierre to Masqua on the South Shore, also with full power to regulate the Police.

15th—The Establishment of public Schools. We think highly necessary, and that Three Rivers is a very proper spot for an establishment of that kind.

(signed) Aaron Hart
Sam[1] Sills
Malcolm Fraser
J. B. La framboiz

## A REPRESENTATION BY MANY OF HIS MAJESTY'S NEW SUBJECTS AT THREE RIVERS TO HIS EXCELLENCY, AND THE COUNCIL, VIZ.[1]

A son Excellence, Lord Guy Dorchester Chévalier du très hoñorable ordre du Bain, Gouverneur Général & Commandant en Chef de la Province de Québec &c &c Et à Son très hoñorable Conseil Législatif.

Monseigneur

Nouce Les habitans de la ville des trois Rivieres, faisant tant pour nous, que pour les habitants des différentes paroisses qui formoient Ci devant Son gouvernement; prenons la Liberté de Répresenter très humblement a Votre Seigneurie et à vôtre hônorable Conseil, que nous avons êté informé que Six personnes

[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 286. See also Q 27-1, p. 451. Text from Original submitted to Council, Translation.

de Cette ville avoient êtés nommées pour former un Comité, à L'effet de représenter L'etat actuel de ce Gouvernement et Ce qui Seroit Nécessaire pour Son bien être futur. Nous avons appris que Ces Messieurs, avoient Envoyés Leur réponce.[1] Et Comme Leur procédés Ne Nous ont point êtés Communiqués et que les habitans de Cette ville N'ont êtés appellés Ni Consultés, Nous ignorons Si les Vrais intentions du peuple ont êtés représenter.

C'est pour quoi Nous suplions Vôtre Seigneurie et Votre hônorable Conseil, de Nous permettre de faire les représentations qui suivent.

De tous tems il y a êu en Cette Ville une Cour Civile & Criminelle; Nous en avons êtés déchus par L'ordonnance de 1770,[2] qui etablis La Cour de tournée. depuis Cet Epoque que de pertes N'ont pas Soufferts les habitans de ce gouvernement ayant êtés obligés d'aller défendre Leurs droits à trente Lieuës d'un Côté et d'autre, et de porter Leur argent aux Deux Extrémités de la province, de façon que ce Gouvernment qui en est le Centre se trouve Ruiné, Ce qui a fait tomber Le Commerce et Découragé L'agriculture et tous les arts.

Nous sommes cependant persuadés, que L'intention de Votre Seigneurie, fut en Erigeant La Cour de tournée, d'opérer en nôtre faveur, Comme en faveur du reste des Sujets de La province, une diminution sur les frais judiciaires et Célérité dans le jugement de nos Causes; Mais Nous allons Démontrer à Votre Seigneurie et à Votre hônorable Conseil, que Loin d'eprouver Ces Effets avantageux, Nous en avons eprouvés de tous opposés. Car d'un Côté les Causes que Nous avons êtés obligés de porter Mouvoir à Montreal, ou à Quebec, entre le tems pour S'y Rendre, et Le séjour Souvent infructueux, que Nous Ne pouvions Nous dispenser d'y faire; Notre Dépence particuliere à la vie, Le Cout de nos témoins, Celui des Significations et Les Emolumens des practiciens Nécessairement réitérés au Moindre incident ou a Chaque Nouvelle Motion, Nous ont Ruinés en partie et Nous ont obligés au Sacrifice douloureux de nos Biens et de nos droits.

Nous N'avons pas êté plus heureux Sur L'effet de la Cour de tournée Erigée par L'ordonnance, Car les Causes de sa Compétence, quoi que de Modiques prétentions, N'etans pas Moins Susceptibles de faits Contestés, prevues et incidens, que celles de la compétence des Cours de Quebec & Montreal, êtoient rarement jugées à leur premiere Motion, de Manière que Leur Remise aux tournées futures êtoit un inconvenient d'autant plus

[1] See p. 929.
[2] For the Ordinance of 1770, see p. 401.

disgracieux qu'indépendament de la perte presque Certaine des frais primitifs, il arrivoit Souvent que le débiteur Dévenoit ou Décedoit insolvable, ou qu'en Couragé par le Laps de tems, se fortifioit dans la Mauvaise foy, ou Changeoit de demeure et emportoit avec lui Le Bien d'un Légitime Créancier.

Nous N'avons pas eû plus de bonheur dans les affaires qui Concernent La paix. Car Messieurs les Commissaires de Cet endroit, N'ont que le pouvoir de donner des prises de Corps, et de faire Conduire Les Malfaiteurs Soit dans les prisons de quebec ou Montreal, fautes de Cautions; Et La partie offencée est obligée d'aller plaider dans l'une ou L'autre de ses deux Cours, et d'y Memer Ses temoins, ce qui fait des frais immenses, dont La partie offençeante et souvent hors d'etat de payer, de façon que La partie offencée, pert Ses avances et les frais de ses témoins, ou bien il faut Laisser tomber L'affaire. Ce qui est souvent arrivé dans Cet endroit.

Pour Remedier a tant d'inconvéniens, nous Suplions Votre Seigneurie et Votre hônorable Conseil, de Nous accorder Les tres humbles Démandes Cy apres Expliquées.

1° Que le gouvernement des trois Rivieres soit Divisé Comme il L'etoit Cy devant, C'est a dire du Coté du Nord, depuis et Compris S$^{te}$ anne, jusques et Compris L'ormiere; et du Coté du Sud depuis et Compris S$^{t}$ Pierre Lebequet jusques et Compris Yamaska.

2. Une Cour Civile Etablié en Cette ville, autorisée à prendre Connaissance des Matieres de nos proprieté, et Matières de Dettes. Les jugemens de Laquelle Cour Ressortiront (au cas d'apels) pardevant Votre seigneurie et votre hônorable Conseil.

3° Une prison Civile pour arretter tous Malfaiteurs. Cette prison êtant dans le centre de la province il ne pouroit en Résulter que de tres bons Effets pour les deux autres Gouvernemens; Car les gens qui Désertent de chès Leurs maitres, qui vols ou qui font d'autres Crimes, doivent Necessairement passer dans Cet endroit, Soit en montant ou descendant. Sans Cela personne N'est pressé de les arretter pour les Conduire Soit dans les prisons de quebec ou Montreal.

Et que Son Honneur, Le juge en Chef de Cette province, jugea Les prisonniers qui se trouverroient détenus dans la ditte prison, Lorsqu'il iroit tenir La Cour du Banc du Roy à Montreal.

4. Un nombre sufisant de Commissaires a paix pour tenir une Cour de Session de quartier, afin de terminer Les affaires d'assaut et Batailles, sans être obligé d'aller à quebec ou à Montreal, ce qui occasionne des frais Considerables Comme Nous l'avons remarqué ci devant, avec pouvoirs de faire des Réglemens pour

Le bon ordre et La Police tant dans La Ville que dans le gouvernement des trois Rivieres, et qu'ils ayent le pouvoir d'infliger des amandes à ceux qui contreviendront aux dits Reglemens. Cette partie ayant êté Négligée depuis L'ordonnance de 1770, fait que Chacun est Maitre et fait ce qu'il veut, ne Craignant aucune punition, à Moins d'aller chercher Justice à Quebec ou à Montreal, aux quels endroits alors, les Choses ne se resemblent plus, comme si l'on en prenoit Connaissance sur le Lieux, chacun Rapportant ce qui est à son avantage, Vrai ou feaux.

5. Un Marché public dans la ville des trois Rivieres et que les habitans du gouvernement soyent obligés d'y apporter Leurs denrés, pour empêcher le monopole que beaucoup de personnes excercent, en acheptant les denrés et les Revendant au dessus d'un honnête Bénéfice.

6. Un Commissaire de Police, qui aura L'inspection du Marché, des poids et mesures dont on y fera Usage, des Rues et autres Nécessités suivant l'exigence des Cas, et principalement de faire observer Les Ordonnances de Cette province.

7. Que le Commerce de La Riviere S$^{t}$ Maurice, Soit Libre aux Commerçeans de Cette endroit Seulement, à L'exclusion de tous autres; attendu que C'est le Seul endroit d'ou l'on tire des Pelletries dans ce Gouvernement, et qui en fait La principale branche de Commerce. Mossieurs Les Negotians de québec et Montréal, ayant des Postes beaucoup plus avantageux pour faire La traitte.

8. Une Ecole publique, Sur le même pied et avec les mêmes privileges et prérogatives que Celles qui seront Etablies a quebec et à Montreal.

Enfin La Protection de Votre seigneurie et de son hônorable Conseil, dans tous cas imprévus. Par tous ces moyens Nous esperons voir refleurir dans Notre gouvernement, Le Commerce, L'agriculture et tous les arts en général.

Nous terminons Nos respectueuses demandes par L'incontestable preuve que L'administration d'une justice accessible, prochaine, et Relative aux Mœurs, Coutumes et usages des Lieux, inspire aux peuples qui les habitent, L'amour, La Vénération, L'obeissance et le dévouement pour Leur prince; dévoirs à jamais inséparable par les Suplians, qui prevenus des bontés de vôtre seignurie, ainsi que de L'esprit de sagesse de votre honorable Conseil, en espérent L'accueil à leur Requête.

Le Ch$^{lrs}$ Niverville, Montisambert,
Godfroy de Normanville. Godfroy de Tonnancour
droit richerville, L. J. Le Proust. fils
Thom$^{s}$ Prendergast John Morris

John Macpherson J. Bat^e Pratt
Louis Labadie. Tonnancour.
J : Baptiste Corbin, L Desbarats
Jean Bolvin, Laguerche fils
francois Clesse, Joseph D'enoy
Le Ch^ver Tonnancour, Jean Douset

| | |
|---|---|
| Charles x Letourneau | Joseph x Bolvin |
| pierre x Panneton | Joseph x Richard |
| Jean x Blondin | Charles x Louval |
| F. B^te Blondin | J. B^te x Pineau |
| J. B^te x Duplacy | J. B^te x Panneton |
| Firmin x Comô | Joseph x Gatant |
| J. B^te x Harnois | Joseph x Bourbeau |
| P^re Baby | Badeaux |

Jean Soulard

Nous Commissaire à paix, et Notaire soussignés Certifions que les noms ci dessus et de l'autre part ont êtés Signés en Notre présence et d'un Consentement unanime. Enfoi de quoi aux trois Rivieres
Le 28. Decembre 1786
Badeaux J P
No^re Le Ch^vr Niverville

(*Translation.*)

A Representation by many of His Majesty's new subjects at Three Rivers to his Excellency, and the Council, viz.

To His Excellency, Lord Guy Dorchester, Knight of the most honourable Order of the Bath, Governor General and Commander in Chief of the Province of Quebec &^c &^c &^c &^c and to his most Honourable Council.

My Lord,

We, the inhabitants of the town of Three Rivers, acting in our own interests, as well as in those of the inhabitants of the different parishes which formerly belonged to its Government take the liberty of most humbly representing to Your Lordship and to your honourable Council, that we have been informed that six persons of this town have been chosen to form a Committee, for the purpose of setting forth the actual condition of this Government and what would be necessary for its future wellbeing. We have heard that these gentlemen have sent in their statement. And as their proceedings have not been communicated to us, and the inhabitants of this town have not been called, or consulted, we are ignorant whether the real wishes of the people have been represented.

We therefore entreat your Lordship and Your Honourable Council to permit us to make the following observations.

There has been from all time in this Town, a Civil and Criminal Court ; we were dispossessed of this by the ordinance of 1770, which established the Circuit Court. Since this epoch, what losses have been sustained by the inhabitants of this jurisdiction who have been compelled to go a distance of thirty leagues in one direction and another to defend their rights, and have had to carry their money to the two ends of the Province, so that the government which is its central point has been destroyed, to the detriment of Commerce, and the Discouragement of Agriculture and all the Arts.

We are persuaded however, that Your Lordship's intention in establishing the Circuit Court, was to bring about, for our benefit, as well as for that of the other subjects in the Province, a diminution of legal expenses, and dispatch in the settlement of our lawsuits ; but we shall prove to Your Lordship and to Your Honourable Council, that far from experiencing these beneficial results, we have experienced the opposite in every case. For on the one hand, the causes which we have been obliged to transfer to Montreal, or to Quebec, have, between the time consumed in travelling, the often useless sojourn which we could not avoid making in these places, the expenses incident to our life there, the cost of our witnesses and of the legal notices, and the fees of the lawyers, which were necessarily repeated for the smallest reason, or on each fresh motion,—partly ruined us, and forced us to the painful sacrifice of our possessions and our rights.

We have not been any more fortunate in the results of the Circuit Court established by the Ordinance. For the causes within its cognizance, although of moderate importance, being as much affected by disputed points, proofs, and incidents as those within the cognizance of the Courts of Quebec and Montreal, were rarely judged on their first motion, and their consequent postponement to future circuits was an inconvenience all the more unfortunate, because independently of the almost certain loss of the first costs, it often happened that the debtor, either became or died insolvent or else, encouraged by the lapse of time, was confirmed in his dishonesty, or changed his residence, and carried away with him the property of a legitimate creditor.

We have not been more fortunate in matters which concern the public peace, for the Commissioners have only power to issue writs, and, in default of bail, to have malefactors taken to prison either in Quebec or Montreal. And the offended party is compelled to go and plead in one or other of these two courts, and to take his witnesses there, thus causing immense expense, which the offending party is often unable to pay, so that the offended party loses his advance money and the cost of his witnesses, or else he is obliged to let the matter drop. The latter often happens in this place.

For the remedying of so many evils, we entreat Your Lordship and Your Honourable Council, to grant us the most humble petitions hereafter set forth.

1st That the Government of Three Rivers be divided as it was heretofore, that is to say on the north side from St. Anne, inclusive, to L'Ormière inclusive ; and on the south side from St. Pierre le Bequet inclusive to Yamaska inclusive.

2. That a Civil Court be established in this town, authorized to take Cognizance of matters concerning our properties, and matters concerning debts. The judgments of which Court shall (in case of Appeal) come before Your Lordship and Your Honourable Council.

3. A civil prison for the detention of all malefactors. As this prison would be in the centre of the Province, only good results could follow for the two other governments ; For people who desert from their masters, who steal, or commit other crimes must necessarily pass through this place either in going or coming. Without this prison, no one would be in a hurry to arrest them to take them to the prisons either of Quebec or Montreal.

And that His Honour the Chief Judge of this Province shall judge the prisoners who shall be found confined in the said prison, when he goes to hold the Court of Kings' Bench at Montreal.

4. A sufficient number of Commissioners of the Peace to hold a Quarterly Court of Session, in order to conclude affairs of Assault and Battery, without being obliged to go to Quebec, or to Montreal, which occasions considerable expense, as we have before remarked, with powers to make Regulations for good order, and for the police, both in the Town and in the Government of Three Rivers, and with power to impose fines on those who shall infringe the said Regulations. This point having been neglected since the Ordinance of 1770, it follows, that everyone is his own master, and does what he chooses, without any fear of punishment, unless justice is sought either in Quebec, or Montreal, in which places, matters have no longer the same appearance, as they would have, if Cognizance were taken of them on the spot, for everyone gives witness to his own profit, whether true or false.

5. A public Market in the Town of Three Rivers, to which the inhabitants of that government shall be compelled to carry their wares, to prevent the monopoly which many persons appropriate, by accepting the wares, and selling them again at more than a fair profit.

6. A Police Commissioner, who shall have the inspection of the Market, of the weights and measures which shall be used there, of the thoroughfares, and other necessities according to the exigencies of the case, and who shall especially enforce the observance of the Ordinances of this province.

7. That the Trade of River St. Maurice shall be free to the Tradespeople of this place only, to the exclusion of all others ; seeing that it is the only place in this Province from which furs are procured, and this is the principal branch of commerce. The Merchants of Quebec, and Montreal have much more desirable stations where they can make their bargains.

8. A public School, on the same footing and with the same privileges and rights as those which shall be established in Quebec and Montreal.

SESSIONAL PAPER No. 18

And lastly the Protection of Your Lordship and of his Honourable Council in all unforeseen cases. We trust by all these measures to see Our Government, Commerce, Agriculture, and all the arts in general flourish once more.

We close our respectful petitions with the indisputable assertion that the Administration of a Justice which shall be Accessible, ready to hand, and in proper relation to the manners, customs, and usages of the places Governed, will inspire the people who inhabit them with Love, Veneration, Obedience and Devotion to their Prince, duties which are forever inseparable from Your Petitioners who anticipating Your Lordship's Favours, and the spirit of wisdom of Your Honourable Council, hope from the same, the favourable reception of their requests.

* * * * * *

We the Commissioners of the Peace, and Notaries undersigned, certify that the names written above and on the other side, have been signed in our presence, and by mutual consent. In witness whereof at Three Rivers. the 26th December 1786.

## D.

## REPORT OF THE COMMITTEE OF THE COUNCIL UPON POPULATION, AGRICULTURE AND THE SETTLEMENT OF THE CROWN LANDS.[1]

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[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 309. See also Q 27-2, p. 497. The members appointed to this Committee were Messrs. De Lery, De Longueuil, Holland, Davidson, Boucherville, and Sir John Johnson. See p. 871. The index will indicate the subjects covered by this Report, but, as in the case of the other reports, only those portions relating to the system of law or government of the Province are here reproduced. The pages given to the left of the index refer to the copies in the Canadian Archives; those given in brackets to the right of the titles refer to this volume.

REPORT OF THE COMMITTEE.[1]

To His Excellency The Right Honorable Guy, Lord Dorchester, Captain General and Governor in Chief of the Province of Quebec &ca &ca &ca.

May it Please Your Excellency,

Whereas Your Excellency by your order in Council of the 6th of November last, was pleased to appoint us a Committee, for taking into consideration the several Objects of Population, Agriculture and the Settlement of the Kings Lands ; and to direct, that we should report thereupon with all Convenient Dispatch.

In humble Obedience to your Commands We have the Honor to report, that we have considered attentively, and by our Inquiries have collected some useful information upon, the several Objects recommended to us ; The Result of which we lay before Your Excellency under their Different heads.

First With regard to Population

We conceive that the most necessary and effectual mean, both of preserving the Lives of His Majesty's Subjects, and advancing Population, is that of regulating Systematically the practice of Physic, Surgery and Midwifery through the Province.—The reflections[a] of Mr James Fisher, Surgeon to the Garrison of Quebec, marked N° 4 and those[b] of Mr. Charles Blake, Surgeon at Montreal N° 11 seem to merit the Attention of the Legislature; inasmuch, at least as they point out a mode by which an object so important to the State, and so interesting to humanity, may be promoted.

a. See Page 524 to 533

b. Page 534 to 538

To these therefore, as well as to the Papers marked—Nos 1. 2. 5. 7. 8. 9. & 10 We beg leave to refer your Excellency.

Secondly Concerning Agriculture.

It is Apprehended that nothing can more effectually Animate the Canadian Farmers to the Advancement of Agriculture than the Revival of the Antient Laws and Usages of the province.

They are briefly recited in the said Paper. No. 1. Article 25.

And

Thirdly—With respect to the Settlement of the Kings Lands.

We have searched the Council Office for the Applications or Petitions for Lands, remaining of record there ; and We have caused a List of them to be made out, to which we refer, marked N° 18.

The Loyalists, who have settled themselves above Montreal have transmitted to us certain Papers marked N° 13[c] & 14[d], in which they intimate their wishes and Desires, that the Lands on which they are settled, should be granted to them under a different Tenure from that Signified in His Majestys Instruc-

c. Page 510 to 518

d. Page 519 to 521.

[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 309. See also Q 27-2, p. 499. The original French copy will be found in Leg. Council Papers 1786-7.

tions.[1] But we are of opinion that the terms and Conditions specified in the Instructions are fit to be adopted.

We humbly submit these matters to Your Lordships superior Wisdom; and we have the Honour to be, with profound respect

Your Lordships most obedient and most humble Servants

(Signed) J. G. C. DeLery
Longueuil
Samuel Holland
Boucherville
John Johnson

Committee Chamber
20th January 1787

At the Committee Chamber the 13th of February 1787.

Your Excellency having been pleased to refer back to us the foregoing Report in order that Sir John Johnson's Dissent from a part thereof (Which Dissent Accompanied the Report, but wherein no Express Reference was made to such Dissent as making part of it) We have in Addition to the above humbly to report to your Lordship that the said Dissent was intended, and is now declared by us to be a part of our said Report.

(signed) J. S. DeLery
Longueuil
Samuel Holland
Boucherville
John Johnson

*Dissent*[2]

Sir John Johnson does not concur in Article the 3rd of the foregoing report, but offers the following Paper as expressing his sentiments upon the Subject of the Reference.

That His Majesty's Instructions to his Excellency Lord Dorchester for granting the Crown Lands, which has been under the Contemplation of the Committee, and upon which the report is principally grounded appears to be the same, as that made to the Governor of this Province in the year 1774.[3]

That Since that Period, the Rebellion, War, & Peace have produced an important change in the situation of this Province, and which will claim and merit His Majesty's Consideration, A change that in Policy, and Justice may prevail with his Majesty, to alter the said Royal Instructions, and grant the Crown Lands, in a manner different, from that recommended by the report of the Committee.

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[1] See p. 773.

[2] See Journal Leg. Council, Vol. E, p. 311; The original in Leg. Council Papers 1786-7; also Q 27-2, p. 502.

[3] In the Instructions to Carleton, drawn up in the end of 1774 and sent to him in the beginning of 1775, article 38 referred to the tenure under which new grants of land were to be made. See p. 608. This article simply followed the additional Instruction of 1771 re-establishing the French feudal tenure. See p. 423. The 28th article of the Instructions of 1775 was reproduced without alteration as the 39th article of the Instructions to Lord Dorchester in 1786. See p. 829.

That Soon after the Commencement of the Rebellion in 1776 the Loyalty and Attachment of several Thousands of his Majesty's faithful Subjects called them forth to take up Arms, and to steady exertion in support of the Laws, and Goverment of Great Britain, and by that Loyal Exertion to protect and secure the property, and Estates which they held under the Crown in the different Provinces.

That By the Treaty of Peace in 1783,[1] His Majesty was pleased to declare the Colonies in Rebellion Free and Independant States, whereby the Kings Loyal Subjects so under Arms, and others in constant Exertions to protect, defend and support the Laws and Goverment of Great Britain, lost their Lands and Estates, which by the Peace fell to the Power and Possession of the united States—Those Lands and Estates afforded them a competent Comfort, and support to their Families, They were held in free and common soccage, and possessed under those Laws, and that Goverment, the best calculated, to protect the Person, and property of the Subject, and render him the most Loyal and happy.

That Many thousands of his Majesty's Loyal Subjects (whose Estates were seized and confiscated) have remained in this Province in the confident hopes that his Majesty in his royal Wisdom and Grace would be pleased to grant to them Lands, upon the same Tenure and under the benefits, as those they formerly held of the Crown and similar to the Grants and Estates, his Majesty has been graciously pleased to grant, and secure to other suffering Subjects, who have resorted to his Majesty's Neighbouring Provinces of Nova Scotia & New Brunswick. That these his Majesty's distressed Subjects by protection of the Crown, and the Laws, to which they had been accustomed, and were attached, might be restored in a great degree, and their Children wholly, to that happiness, and those Blessings, they fully experienced under the British Government prior to the Rebellion.

That They have had every reason to be thankful for his Majesty's Paternal Care, and the Bounty and Liberality of the Nation, But that the hopes and Confidence, of those Suffering Loyalists are, that they may hold Lands of the Crown, in free and Common Soccage, and not *en roture* as the Vassals or Censitaires of a Seignior.

That Such Tenures are Contrary to the Growth of a Commercial, English Colony, are adverse to Agriculture, must impede the population of the Province, and are Tenures not the most advantageous to the Policy and Interest of the Nation.

That If the Lands upon which such Loyalists have already been settled in this Province, could not be obtained but *en roture* as feudal Vassals, it is more than probable, that many of the Settlements already made would be abandoned and those his Majesty's faithful subjects driven to seek a refuge and support in some other situation, whereas by granting those Lands in the manner which all other Crown Lands are granted, and in which all other Loyalists since the Rebellion and Peace have obtained Lands in the

[1] See p. 726.

Kings neighbouring Provinces, his Majesty would in Wisdom and Mercy extend a source of Comfort, and Prosperity to those subjects, and greatly strengthen and increase the population, Power and Utility of this Province to Great Britain.

That If it should please his Majesty to use the ungranted Lands in this Province, to the best National benefit, as an assylum to the Loyalists now in Great Britain, who have infinitely suffered and are in distress, and who are desirous to become Residents in this his Majesty's Colony, and also as an assylum to those his Majesty's loyal subjects, who have been persecuted during the Rebellion, and yet remain oppressed in the American States, soliciting his Majesty's Royal Protection, and an Establishment, as and with his faithful Subjects in this Province, His Majesty many increase the Number of his Subjects in this Province many thousands, by conceding the Crown Lands on the same Terms and affording the same protection to his Subjects in this Colony, which in his Royal Wisdom and Justice, his Majesty doth in the Provinces of Nova Scotia and New Brunswick.

That Such an Addition of numerous Subjects would not only increase the population of the Province, but infinitely add to its powers, and to the National Advantages which Great Britain reasonably ought to expect and receive from an extent of Country, which might be populated, Governed, Protected and secured as a Colony, drawing small expences, and affording great benefit to the Nation.

That So far from concurring in the Opinion, that the general Tenure of Lands, now held under the Crown in this Province, were under the Feudal system, by grants from the French King, to his Subjects en Fief & en Roture, and that to grant the Crown Lands in the same manner, would preserve an Uniformity in the Tenure of Estates, and the Laws that Governed Civil Rights thereon, & therefore ought to be conformed to by any new Grants That he humbly conceives it may well deserve the deliberation of Government, whether it will not be more for the interest of his Majesty and the Nation, and Also to the holders of Land in Seignorie and en Roture, if his Majesty would be graciously pleased to concede, and make a free Gift of his rights to mutation fines, & permit as well the Seignior as the Censitaires or Vassal to convert their Estates into free and common soccage, the latter upon a commutation with the Seignior for his rights on the Vassallage Tenure, such a grant and permission would be gratefully received, and would have the effect at no very distant period of assimilating this to the other of his Majesty's Colonies in America.

And he further humbly conceives, that if the Crown Lands contiguous to those at present settled, were to be granted to and cultivated by his Majesty's English Subjects, they would diffuse a Spirit of Industry and a Knowledge in Agriculture, that would prove of infinite benefit to the Colony and the Nation.

JOHN JOHNSON

## LETTER FROM THE MAGISTRATES AT CATARAQUI TO SIR JOHN JOHNSON, BARONET.[1]

Cataroqui 22nd Decr 1786

Sir,

Your Circular letter directed to the Magistrates of the new Settlements, dated the 27th Novr reached this Place to day, at a time when a Memorial was preparing to be laid before His Excellency Lord Dorchester, in Council, respecting some matters deemed essential to the welfare of the Settlements in this District ; and we are happy to find His Lordships Disposition to serve us, has rendered such a step unnecessary; and it gives us an additional pleasure that we are required to transmitt our Sentiments on such an important subject, to you Sir, of whose Exertions to procure us every Advantage, Our Situation will admit of, we cannot entertain a Doubt.

The object that first presents itself as of the most importance is the Tenure of the Lands ; The Conditions on which they have been granted to the Loyalists in this Province are so different from what they have been used to, and so much more burthensome than those offered to Our fellow sufferers in Nova Scotia and New Brunswick, that they are universally disagreeable.

Nothing, in our Opinion would conduce so much to the prosperity of these Settlements as the putting the Grants of Lands on the same footing they are on in the rest of British America. This would at once give the most universal Satisfaction, Enhance the Value of all the other Benefits that Government have bestowed on the Settlers, And prove the most powerful Spur to Industry of all kinds.

Next in order is the due Execution of Justice and the Administration of the Laws. The Power lodged at present in the Hands of the Magistrates is found by experience, very inadequate to the Regulation of a District so populous and extensive as this. Many Causes have and must occur, that, they are not authorized to determine, and many crimes and trespasses have and probably will be committed, that, it is not in their Power to punish.

The Courts of the lower parts of the Province are so distant, and the expence and trouble of attending them, and bringing the necessary witnesses so far from their Homes, so great, that unless in Cases of great importance or Enormity, Offenders must always escape with Impunity: The ruinous Consequences of which must be sufficiently obvious.

To prevent these, we would recommend the Establishing at this Place Courts of both Civil and Criminal Jurisdiction, for the Settlements in its Vicinity; so that all matters respecting either Persons or Property may be decided without any great delay or expence. And we think moreover, that, it will still be useful to the Settlements that the Justices of the Peace retain

[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 316. See also Q 27-2, p. 510. The name of Cataraqui was shortly afterwards changed to "Kingston."

the Power they are invested with of deciding Causes not exceeding the Value of Five pounds; as the suing for such Small Sums at Court must generally be attended with more expence than the first demand amounts to, and the Speedy decision of such causes is often of more Consequence to the Parties than the Sum itself.

That the Proceedings of Our Courts be regulated as far as possible by the Laws of England is a matter much to be wished; but whatever system is adopted in this respect, We conceive it would be highly useful to have it compiled into a regular form and Printed.

The Election or appointment of proper Officers in the Several Townships to see that the Necessary Roads be opened and kept in proper Repair We conceive, would be of great utility, by facilitating the Communication with all parts of the Settlement.[1]

Humanity will not allow us to omit mentioning the necessity of appointing Overseers of the Poor, or the making of some kind of provision for Persons of that description, who from Age or Accident may be rendered helpless. And We conceive that it would be proper that the Persons appointed to this charge, as well as the Road masters, should be directed to make regular reports of the State of their districts, to the Courts at their meetings; and be in all Cases subject to their Controul.

After providing for the Security of Persons and Property, the Object that next presents itself for consideration is the Trade of the Settlement.

Its Exports, if we may use the expression, will probably be confined to the following Articles, namely, Wheat and all kinds of Grain, Hemp, Flax seed, Pot Ash and Lumber; and in Proportion to the Price and demands for these Articles, will be the ability of the Settlement to purchase the Manufactures of the Mother Country.

From the recent Establishment of this Settlement it cannot be expected that at present the Settlers should be able to do more than provide themselves Bread; but in the forming of Regulations for promoting their prosperity, we presume that Regard will be had to what their situation is likely to be in a few Years.

And in this View it may be useful to appoint Inspectors at this Place to examine all the different Articles of Produce that are intended to be sent for Sale from this Settlement to the lower parts of the Province, that none but what are of the best quality may be so Sent; and that it may not be in the power of individuals to bring the produce of the Settlement into Disrepute, by offering for Sale Articles of indifferent quality.

We would also Submit to the Legislature the propriety of encourageing by a Bounty, the raising, and dressing of Hemp & Flax Seed, and the manufacture of Pot Ash; these being Articles that Great Britain annually purchases from foreign States to a considerable amount; Whatever Her own Settlements can supply is of course a National Saving; and the manu-

[1] This is the beginning of the agitation in the western settlements for the introduction of municipal government.

facture of Pot Ash in particular is so useful to a New Country in more than one way, that it seems to merit peculiar encouragement.

There are two other things relative to this Subject that will be productive of much advantage to this Settlement; and these are, that Government should take what Grain &c the Settlers may have to spare towards furnishing the necessary Supplies for the Troops &c. in the Upper Posts; And make this place instead of Carleton Island[1] the Quarters of the Naval Department and the Depôt of Stores &c. intended for the Garrisons in the Upper Country.

As these however are matters that depend Solely on His Lordships good pleasure, You may perhaps think them on that account foreign to the purport of Your Letter. But they are matters of such great utility to the Settlement, that we could not omit this opportunity of mentioning them: And we trust that Your regard for its welfare will induce you to represent them to His Lordship in the most favorable manner.

As Government have already been graciously pleased to provide for the establishment of a Clergyman[2] and school at this place, it is with the utmost diffidence, that, we offer anything on this head; but when it is considered that from the extent of this Settlement, it is impossible for the greater Part of the Inhabitants to profit by these Establishments, We trust it will not be thought unreasonable to request some assistance towards making provision for Clergyman and School-masters at convenient places through the Settlement; that the Inhabitants in general may participate of the benefits of these useful institutions.

It appears to us also as a matter worthy of consideration, whether Persons residing in the present American States, But who are of known attachment to the British Government, might not be admitted as Inhabitants of these Settlements on producing Authentic proofs of their Loyalty, and whether Such Persons might not be permitted to bring with them Such Cattle or Farming Utensils as they may possess, and it may also be worthy consideration whether some means might not be fallen upon for introducing such Property into the Settlements as the present Inhabitants may have possessed and be able to recover in the American States.

They may often be able to get Cattle or farming Utensils for their Dues there, when Money is not to be had, but these not being allowed to be brought in are of no use.

Could favourable Regulations be made respecting these matters consistently with the more important Interests of the Province at large, and in Such a manner as to prevent abuses, We believe it would soon make such

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[1] During the Revolutionary War a naval post had been established at Carleton Island, which lies between Wolfe Island and the American shore below Cape Vincent. It was also a depot for the transhipment of stores, &c. between the St. Lawrence river and Lake Ontario navigation. It was one of the posts ceded to the United States by the Treaty of 1783, but not given up at the time.

[2] Dr. John Stuart, formerly missionary to the Mohawk Indians, was the first clergyman appointed at Kingston, and hence in Upper Canada.

an addition to the Population and Property in these Settlements as would visibly encrease their Importance.

We have now laid before You such matters as occur to us as the most important for promoting the grand objects mentioned in Your letter consistently with our Situation.

For though the establishment of the English Laws and form of Government in their fullest extent would unquestionably be the most effectual mode of promoting and establishing the Welfare of the Settlement, Yet there are advantages We dare not presume to hope for distinctly from the other Parts of the Province.

We are Sir
With the greatest respect
Your most obedient and
Very humble Servants.

Neil M$^{c}$Lean
W. R. Crawford
James Parrot
Jeptha Hawley
Peter Van Alstine
Michael Grass

To the Honorable
Sir John Johnson
Bar$^{t}$.
Montreal

LETTER FROM THE MAGISTRATES AT THE OSWEGATCHEE TO SIR JOHN JOHNSON, BARONET.[1]

New Oswegatchee 18$^{th}$ Dec$^{r}$ 1786.

Sir

The Magistrates of this Settlement having communicated to us, the contents of your letter of the 27$^{th}$ Nov$^{r}$ respecting the best Mode for the population, Agriculture and settlement of the Kings lands in this province, We have to request you'll please to return our warmest thanks to his Excellency Lord Dorchester for this early instance of his paternal care for us, and to represent to His Excellency our Sentiments, & prayrs hereunder written, should they coroborate with your own. And if they should in any Instance deviate from what you Judge, proper to be represented, we have the fullest confidence in your care & friendship for us; and your General knowledge of the Sentiments, Dispositions, and wishes of the Loyalists Settled in this Province; and Chearfully Submit to you, to make such alterations in these our Sentiments as your prudence may Dictate.

1$^{st}$ We most earnestly pray for ourselves & in behalf of the Inhabitants of New Oswegatchee, that we may have our Lands by Grants free from any Seigniorial Claims or any other incumbrances whatever, The Kings Quit rent excepted.

[1] Canadian Archives, Journals of Leg. Council, vol. E, p. 322. See also Q 27-2, p. 519. The old post of Oswegatchie is now known as Ogdensburg, and the new establishment on the opposite side of the river St. Lawrence after the Revolutionary War, was known at first as New Oswegatchie. The name was commonly applied to the whole district as far up as Brockville.

2nd That we may be governed by the Brittish Constitution & Laws for the support of which and His Majestys Crown & Dignity we first took Arms in opposition to the American Congress.
3d That we may be formed into seperate Countys from Pointe Au Baudet upwards, having our own Courts, Judges and Civil officers &ca perhaps one County from Pointe Au Baudet to the Great river Gananaque holding Courts Alternately at New Johnstown and New Oswegatchee, may be the most convenient for the lower Settlers, and another County from Gananaque to the head of Quinty Bay, & a Third including Niagra & upwards, And perhaps your representation may Incline His Excellency to form the whole unto a separate Government Dependant on Lower Canada.
4th We humbly conceive that nothing could more rapidly promote the settlement of the Kings lands, than the Encouragement of the Gospel, and Schools in these Infant Settlements.

And lastly—we pray that a stop may be put to the importation of Timber or Lumber of any kind unto Canada from Vermont or any of the American States, and some encouragement given to the Loyalists to Supply Lower Canada with lumber, as that is at present the only staple Commodity in this Country. We have the Honor to be with great respect & esteem

Sir your most obdt & humble Servts

James Campbell
Elijah Bottoms
Thomas Sherwood
Dan[1] Jones
William Lamson
Allan McDonell

Justus Sherwood
Wm Fraser
Allan McDonell
Joseph White
John Jones
Peter Drummond
Thos Fraser
John Dulmage

## DORCHESTER TO SYDNEY.[1]

No 18.

Quebec 13 June 1787.

My Lord,

The latter part of the Merchants reports to the Committee of Council for Commerce and Police, together with the petitions from the Canadians occasioned thereby,[2] will shew Your Lordship a diversity of opinions in this province concerning the Laws and a House of Assembly, more accurately, than I should have been able to procure without these representations. The English party has gained considerable strength of late years by the Loyalists, who have taken refuge in the province ; and many more discover a strong inclination to follow, so that it is more than probable the desire for an Assembly will annually increase ; yet common prudence seems to

[1] Canadian Archives, Q 27-2, p. 983.
[2] See Report on Commerce and Police, pp. 612-639.

require, before an alteration of that magnitude should be attempted in a country composed of different languages, manners, and religions (where nine tenths of the people are ignorant of the nature and importance of an Assembly) that the whole plan should be minutely unfolded, and its effects upon the Legislature and the provincial economy clearly discerned. This description should be published and time given for all men to make themselves masters of the project, and form their opinions thereon, free from artifices and intrigues of any kind. Without these precautions it is more than probable, that disappointments and disorders might arise even at the outset. For my own part, I confess myself as yet at a loss for any plan likely to give satisfaction, to a people so circumstanced as we are at present.

But what urges more immediately is an alteration in the tenure of lands to be granted by the Crown. The Instructions direct that these lands be granted in a manner every way similar to the tenure under the French Government.[1] Whatever merit this system might have had formerly, so great have been the changes of late years on this Continent, that a new line of policy, adapted to the present relative condition of the Neighbouring States, and suited to the minds and temper of the King's subjects, is become indispensably necessary for Great Britain. I therefore humbly recommend that His Majesty would be graciously pleased to allow His Governor and Council to grant His lands in free and common soccage, unincumbered with any crown rent whatever ; but not more than one thousand Acres to the same person without the King's approbation. Many petitions have been sent down by the Loyalists (the last of which is inclosed)[2] praying among other things to be placed upon the same footing with their bretheren in Nova Scotia and New Brunswick; some disorders have also been excited among them, concerning which I have directed immediate investigation. It is not on account of these petitions, that I propose the alteration, but because I judge it highly expedient to remove the Smallest Cause of discord between the King's Government and His people, or between Great Britain and these Provinces, on any score whatever.[3] And it is for this purpose I further recommend, that the thirty-pence for every hundred Acres be remitted in Nova Scotia and New Brunswick to all who do not hold more than one thousand acres; as to others, I think this right should be reserved merely as a check on large grants to persons who never mean to cultivate or improve, and who at present obstruct the settlement of those provinces.

It may be advisable to reserve in every township of thirty thousand acres, five thousand to be granted only at a future day under the King's Special directions; These reserved parcels will enable His Majesty to reward

[1] It was on the urgent recommendation of Carleton himself that the reversion to the French system for new grants of land was made. See Carleton to Shelburne, p. 202, and draught of Ordinance relating to French land tenures, p. 204. In consequence of this and other recommendations from Carleton, the instruction of July 2nd, 1771, was issued (see p. 295), requiring that all future grants of land to English and French subjects alike should follow the French feudal tenure.

[2] See below p. 647.

[3] See note 3, p. 551.

such of His provincial Servants as may merit the Royal favour, and will also enable the Crown to create and strengthen an Aristocracy, of which the best use may be made on this Continent, where all Governments are feeble, and the general condition of things tends to a wild Democracy. People of property in the States are now, I believe, sensible of the evils occasioned thereby, and would bring forward an adequate remedy, did they know how to carry it into execution.[1]

As the planters approach the Indian country, they are afresh stimulated by the manners of that lawless people, who may be influenced but not easily controlled, and they in a great measure imbibe their uncivilized ideas of liberty. The American side of the great lakes would in a short time be covered by settlers of this description, was it not for their fear of the Savages. This check sooner or later will be done away, prudence therefore requires we should prepare for the event in time, by placing the King's subjects on this side in every respect in a situation at least as eligible, as that of their neighbours.

The introduction of intermediate seigneurs at that distance would, I think, be totally impracticable.

The Canadians at Detroit have been under a strong military control, and therefore have paid their rents and mutation fines, the produce of which has been taken by the Commanding Officer of the Post as his perquisite, I know not by what Authority ; their friends on the Wabache paid nothing, placed as they were at some distance from our garrison at Detroit ; and from hence we may understand their aversion to our taking post among them ; they expected we should require the same dues paid at Detroit, from which the Americans, they were assured, would set them free.

The Quitrents in the English Colonies were not one sixth of the burthen on these lands en roture, and yet I understand that Government was never able to collect them ; but, after the revolt had taken place, offered to relinquish the claim; from all which I am convinced these dues never will be paid, and only prove a perpetual cause of discontent, and afford the means of alienating the minds of the people from the King's Government.

I am with much respect and esteem
Your Lordship's most obedient, and most humble servant.

DORCHESTER

The Right Hon$^{ble}$
Lord Sydney

[1] This paragraph indicates the central policy of much of the Constitutional Act of 1791, and the basis of the Crown Reserves, in addition to the Clergy Reserves.

SESSIONAL PAPER No. 18

## PETITION OF THE WESTERN LOYALISTS.[1]

Copy / To His Excellency the Right Honorable Guy Lord Dorchester Captain General and Governor in Chief of the Colonies of Quebec, Nova Scotia, and New Brunswick, and their dependencies, and Vice Admiral of the same. General and Commander in Chief of all His Majesty's Forces in the said Colonies, and the Island of Newfoundland.

The petition of the Subscribers, residing in the new settlement, in behalf of themselves and the Inhabitants at large, in the respective Townships, from Point au Baudet on Lake S[t] Francis Westward, as far as Niagara.

Humbly Sheweth,

That your Petitioners impressed with the most lively sentiments of gratitude, beg leave through the Channel of your Lordship, to offer their sincere, and united tribute of thanks to their most gracious Sovereign for the singular, and multiplied favors conferred on them ; at the same time they presume that your Lordship will with your wonted Goodness, interest yourself in regard to some propositions they have to make which with submission, they conceive are very essential to promote the happiness of the People, and facilitate the progress of the settlement ; and they humbly hope, that what your Lordship cannot with propriety grant yourself, you will be So condescending as to recommend to His Majesty, for His Royal approbation and consent.

1[st] It is the confirm'd opinion of your Petitioners from the fullest conviction, that if the blessings of the British Constitution was extended to this infant Settlement, and their Lands granted according to English Tenures, such a change wou'd produce many happy effects, among the rest to augment the happiness of the People, to strengthen the bands, as well as the Interest of Government, to give a Spur to Industry, to population and Commerce and damp the hopes, and the expectations of their enemies ;— at the same time they must confess, it is not without some degree of envy that they reflect on privileges, and indulgences, granted to their fellow Sufferers in Nova Scotia which they themselves do not enjoy—especially when the same motives which engaged them in the Honourable and Glorious cause of defending the rights of their Sovereign, and the dignity of the Nation, places them on the same footing, and gives them equal pretensions. but notwithstanding they rest satisfied in the hope that your Lordships representation of their situation, will induce His Majesty to interpose His Royal favor in their behalf, to remove all cause of Jealousy and crown the happiness of your Petitioners ; the arrangement for this purpose so anxiously wished for, and the arguments in support of it, are so well described in a petition drawn up by Sir John Johnson and others, in behalf of themselves and the Loyalists at large in this Province (and presented to His Majesty

[1] Canadian Archives, Q 27-2, p. 989. This is the petition referred to in the foregoing letter from Dorchester to Sydney and enclosed with it.

in Council the 11th April 1785)[1] renders it unnecessary to add anything further on the subject at present, except to beg leave to refer your Lordship to the aforesaid Petition, and to transmit you a Copy, which will accompany this.

2d Your Petitioners pray for some assistance in establishing the Church of England, and Scotland, in this Infant Settlement, and that a Glebe of Four Hundred Acres of Land in each Township, may be set apart for a Clergyman.

3d They pray for some assistance towards establishing a school in each district vizt New Johnstown,[2] New Oswegatchie, Cataraqui and Niagara, for the purpose of teaching English, Latin, Arithmetic and Mathematics.

4th They pray for a prohibition of Pot and pearl Ash and Lumber from the State of Vermont, to prevent a door being opened for an Illicit Trade from the United States, which wou'd be a detriment to the Province in general, to this Settlement in particular, and only beneficial to a few interested Individuals—they also pray for a Bounty to be laid on the above Articles, as well as on Hemp, in Order to stimulate their Industry, and encourage their internal Trade.

5th They pray that Government will be so generous in addition to former Bounties, to grant them a loan of three month's provisions, consisting of the article of Pork only. —to be paid by the Settlers in three Years, under such restrictions and obligations as may be thought most expedient to insure the punctual payment of the same.

6th They beg to inform your Lordship that a number of the Inhabitants who have been in the service are so unfortunate as not to have drawn any Clothing by reason of their not being in the Province at the periods when it was issued, and that others who cannot be put in this class are yet notwithstanding on account of their distress'd situation rendered objects deserving of such an indulgence.

7th They pray that some Plan may be adopted to expedite the Business of running the division lines in the respective Townships, to prevent the increase of an evil already experienced on account of that not being done.

8th They pray that a Post Road may be established from Montreal to Cataraqui with Post Officers for Letters &ca at New Johnson, New Oswegatchie, and Cataraqui.

9th They Pray that a passage may be opened from the head of the Bay of Quinty through Lake Huron for the Benefit of the Indian Trade, a Channel which at the same time that it is universally acknowledged to be Superior to the Old holds out a prospect of the most flattering advantages, not

[1] This petition is given at p. 773.

[2] New Johnstown was the general name for the eastern portion of what was afterwards the District of Luneburg, and still later the Eastern District. It comprised townships 1 to 5 from Point Baudet westward. In its narrower sense it was a village in the township of Edwardsburg, about three miles east of Prescott, which was for a time the capital of the Eastern District. New Oswegatchie was, in like manner, the older general name for the western portion of the District of Luneburg comprising townships 6, 7 and 8. It was originally occupied by Jessup's Corps. Cataraqui, afterwards Kingston, while retaining its local designation as under French rule, was nevertheless used to indicate the whole settlement in its neighbourhood, comprising the seven adjoining townships to the westward.

only to the Commerce of this Province in general, but to this settlement in particular. It is also humbly requested that the shipping may be allowed to Rendezvous at Cataraqui and the Inhabitants have the free use of the Lakes for whatever craft they may chuse to build.

10th They pray that three places may be pitched upon between Point au Boudet and Cataraqui for the purpose of receiving Grain from the Settlers when they have any to Spare, in consequence of your Lordship's generous proposal communicated to them thro' the Inspector of Loyalists.

11th They pray your Lordship will be so kind as to use your influence with the Commissioners appointed to examine the Claims of the Loyalists, to induce them to make a Journey to New Johnstown, New Oswegatchie, and Cataraqui to investigate the Claims of the Loyalists on this Communication, as the poverty of the Settlers in General and the expence of an attendance at Quebec or Montreal in the prosecution of their Claims, will discourage them from the attempt, or oblige them totally to relinquish them.

12th They also pray that your Lordship will be so good as to confirm to them the use of the Locks or Canalls[1] as hitherto granted by his Honor Lieut Governor Hope, and that you will likewise please to put them on an equal footing with the 84th Regt in Regard to the proportion of Lands granted to that Corps ;—this is a flattering object to your petitioners whose finances are mostly exhausted in the expensive and Arduous task of forming a Settlement in a New Country, and which on that account as well as the justice of their pretensions they hope will induce your Lordship to take this Matter into consideration.

Upon the whole your Petitioners have the fullest confidence that your Lordship will be so good as to pay every attention to the several Articles contained in this Petition that accord with Reason and Justice, and those which may appear otherwise they conceive your Lordship will kindly impute to a mistaken opinion, or want of proper information. And Your Petitioners as in duty bound will ever Pray

signed

| | | | | | |
|---|---|---|---|---|---|
| Peter VanAlstine— | 4th | Township | | Alexr McDonell, Township | No 1 |
| George Singleton— | 3 | do | Bay Quinty | S. Anderson Township | 2 |
| Archd McDonald | 5 | do | | John McDonell— do | No 3 |
| John Everitt | 1 | do | | Richd Duncan— do.— | No 4 |
| Henry Simmons | 2 | do | | John Munro— do.— | No 5 |
| | | | | Wm Fraser— do.— | No 6 |
| | | | | Justus Sherwood, James Campbell, John Jones — do | No 7 |
| New Johnstown April 15th 1787 | | | | Thos Sherwood, Peter Frul — do | No 8 |

[1] Referring to the improvements made by the Government at various points on the River St. Lawrence, for facilitating the navigation of the river by batteaux.

## MEMORIAL OF MERCHANTS TRADING TO QUEBEC.[1]

To the Right Honorable Lord Sydney one of his Majesty's principal Secretaries of State &c &c.

The Memorial of the Merchants Trading to the Province of Quebec. Humbly Sheweth

That your Memorialists had the Honor in May 1785 of presenting to your Lordship Petitions from the Inhabitants of the Province of Quebec, praying for a reform of the Civil Constitution of that Colony.[2]

Your Memorialists were sensible that those Petitions deserved the most serious consideration, and therefore in Compliance with the wishes of his Majesty's Ministers recommended to their Constituents, to defer bringing them forward in Parliament, untill the necessary information could be received on the Allegations contain'd therein.

That your Memorialists by Letters and other Papers received from their Constituents last Fall have been urged in the strongest Terms to bring forward their Petitions Presuming that Government is now possessed of sufficient proof, that their Complaints against the present Constitution of the Province, and the mode of administering justice in the Courts of Law are well founded.

That your Memorialists from the defects in the present System of Laws, and the great uncertainty in the decisions of the Courts, have sustained immense Losses, and If a Remedy is not speedily applied, are under the most alarming apprehensions of suffering further from the same Causes, they beg leave therefore to submit as their opinion that the only Effectual means of removing the Evils Complained of, restoring unanimity and promoting the prosperity, of that Province will be to grant them an Elective House of Assembly, the English Commercial Laws, and to reform the Courts of Justice as Prayed for in their Petitions.

Your Memorialists convinced from the Premises that a longer delay in bringing forward the Petitions committed to their Care will prove equally injurious to the Province, and the Interests of the Mother Country, pray they may be informed what Measures are intended by his Majesty's Ministers for the relief of that distressed Colony.

New York Coffee House
4th February 1788

Robt Hunter
Phyn, Ellice & Inglis
Murray & Sansom
Jno. Paterson
Amos Hayton
Brickwood Pattle & Co.

[1] Canadian Archives, Q 56-3, p. 745.
[2] Referring to the petitions of Nov. 24th, 1784, presented in 1785. See p. 742.

Dyer Allan & C°.
Rob$^{t}$ Rashleigh & C°.
M & T. Gregory & C°.
Elias Lock
Miller Hart & C°
Harrison Ansley & C°..
Bowring Trist & C°.
Adam Lymburner
Hunter & Blanchard

## PATENT CREATING NEW DISTRICTS.[1]

NUM. 1198

SUPPLEMENT TO THE QUEBEC GAZETTE.

(Signed)
DORCHESTER, G:

George the Third, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. To all Our loving Subjects, Greeting : Whereas Our Province of Quebec stands at present divided only into two Districts, and by virtue of two certain Acts or Ordinances, the one passed by Our Governor and the Legislative Council, in the twenty-seventh year of Our Reign, and the other in the present year, provision is made for forming and organizing one or more new Districts : Now therefore Know Ye, That Our Governor of Our said Province, by the advice and consent of Our Council of Our said Province, and in pursuance of the Acts and Ordinances aforesaid, hath formed, and doth hereby form the several new Districts herein after described and named, to wit, the District of Luneburg, bounded on the East by the Eastern-limit of a tract lately called or known by the name of *Lancaster*, protracted Northerly and Southerly as far as Our said Province extends, and bounded Westerly by a North and South line intersecting the mouth of the river *Gananoque*, now called the *Thames*,[2] above the rifts of the *Saint Lawrence*, and extending Southerly and Northerly to the limits of Our said Province, therein comprehending the several towns or tracts called or known by the names of *Lancaster*, *Charlottenburg*, *Cornwall*, *Osnabruck*, *Williamsburg*, *Matilda*, *Edwardsburg*, *Augusta and Elizabeth-Town* ; And also one other District to be called the

[1] Canadian Archives Minutes of Privy Council, Vol. E. p. 292. See also Q 39 p. 122. On December 27th 1787 the Governor laid before the Executive Council a draught of the patent for establishing additional districts in the new settlements above Montreal. Journals of the Ex. Council. Vol. D. p. 399. On the 20th. March 1788 a draught of the patent for five new districts was referred to a Committee of Council. ibid. Vol. E. p. 149. Finally on May 14th the Governor submitted to them the propriety of forming the new districts as proposed. A new proclamation for that purpose having been prepared it was ordered that it should issue under the Great Seal. ibid. p. 292. As we see it was officially proclaimed on July 24th 1788. As stated in the introduction, the Patent was issued in accordance with the Ordinance of April 30th, 1787. See p. 860

[2] This name was not permanently adopted, that of "Gananoque" being retained. But at the instance of Lt. Governor Simcoe, the River "Tranche" in western Ontario was afterwards named "Thames."

District of *Mecklenburg*, extending within the North and South bounds of Our said Province, from the Western limits of the said District of *Luneburg*, as far Westerly as to a North and South line intersecting the mouth of a river now called the *Trent*, discharging itself from the West into the head of the *Bay of Quinty*, and therein comprehending the several towns or tracts called or known by the names of *Pittsburg*, *Kingston*, *Ernest-Town*, *Fredericksburg*, *Adolphus-Town*, *Marysburg*, *Sophiasburg*, *Ameliasburg*, *Sydney*, *Thurlow*, *Richmond* and *Camden* ; and also one other District to be called the district of *Nassau*, extending within the North and South bounds of Our said Province, from the Western limit of the last mentioned District, so far Westerly as to a North and South line, intersecting the extreme projection of *Long-point* into the *Lake Erie*, on the Northerly side of the said *Lake Erie* ; and also one other District to be called the District of *Hesse*, which is to comprehend all the residue of Our said Province, in the Western or inland parts thereof, of the entire breadth thereof, from the Southerly to the Northerly boundaries of the same ; and also one other District to be called the District of *Gaspé*, and to comprehend all that part of Our said Province on the Southerly side of the river *Saint Lawrence*, to the Eastward of a North and South line intersecting the North-easterly side of *Cape Cat*, which is on the Southerly side of the said river, of which all Our loving Subjects are to take due notice and govern themselves accordingly. In Testimony whereof We have caused these Our Letters to be made Patent, and the Great Seal of Our said Province to be hereunto affixed. Witness Our Trusty and Well-beloved Guy Lord Dorchester, Captain-general and Governor in chief of Our said Province, at Our Castle of *Saint Lewis*, in Our City of *Quebec*, the twenty-fourth day of *July*, in the year of Our Lord one thousand seven hundred and eighty-eight, and of Our Reign the Twenty-eight.

(Signed,) D.

(Signed,) GEO : POWNALL, Sec$^{y}$.

## SYDNEY TO DORCHESTER.[1]

Whitehall 3$^{d}$ Sep$^{r}$ 1788.

Lord Dorchester.

My Lord.

Your Lordship will have seen, by the proceedings which took place in Parliament in the course of the last Session, the Arguments which were made use of on the Introduction of the Petition brought by M$^{r}$. Lymburner from Quebec, for a Change of the present Constitution of the

[1] Canadian Archives, Q 36-2, p. 469.

SESSIONAL PAPER No. 18

Province, and the reasons which occurred to His Majesty's Ministers for avoiding any decision upon that very important Subject.[1]

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[1] On May 16th, 1788, Mr. Powys moved in the House of Commons, that Mr. Adam Lymburner, Agent of that section of the population in Canada, French and English, desirous of having a House of Assembly, &c., be heard at the Bar of the House in support of the petition from Quebec of 24th Nov., 1784. Mr. Lymburner being admitted read a paper pointing out the defects of the system of laws then administered in the Province and the need for a remedy. This paper is given in Q 62A-1, pp. 1-101. After he had withdrawn, a debate followed which is quite fully reported in Hansard, Vol. 27, pp. 511-533. The substance of the debate, however, is given in the following summary from the London Chronicle.

"*Mr. Powys* entered into a detail of circumstances and the allegations contained in the petitions. He stated it as the general wish of the Canadians, that some determinate code of laws should be established in that Province, and that they might not henceforward be subjected to the sole ordinance of a legislative Council, appointed by the Crown, and removable at the pleasure of the Crown. They wished to have a House of Assembly instituted in the province, and the English laws in general extended to them. He observed, that they had not the privilege of Habeas Corpus; at least it was not a part of their constitution, though it might be occasionally allowed them. They were deprived of the trial by Jury, except in a few instances. As to the Council, above alluded to, it ought not to exist; for, in the opinion of the best informed and most elegant historian of the present age (Mr. Gibbon), where the legislative power is appointed by the executive department, it is a sure criterion of a despotic government. The petitioners wished to be put on the same footing with the provinces of Nova Scotia and New Brunswick, which have a House of Assembly, and partake of the blessings of English laws. He thought their request was just and reasonable, and merited the attention of the House. He concluded with moving, That it is the opinion of this Committee, that the petitions from Quebec merit the serious and immediate attention of the House.

*Sir Matthew White Ridley* seconded the motion. The laws, he said, were in Canadâ vague and undefined; and wherever this is the case, very great abuses are the consequence. He hoped, that if the House should not find time in the remainder of this session to come to any ultimate decision on the subject, they would at least adopt a resolution that might give the Canadians good reason to hope for a determination in their favour in the succeeding session.

The *Chancellor of the Exchequer* agreed with the Hon. Mover, that the petitions deserved the serious attention of the House; but nothing could be done immediately in the business. Parliament, he said, was not ripe for the discussion of an affair of such magnitude as the framing of a constitution for a large, flourishing and growing province. A sufficient body of information had not been transmitted from that colony, to enable the House to determine upon the merits, of the subject contained in the petitions. As to the appointment of a House of Assembly, though he was inclined to recommend that mode of legislation, he had strong doubt whether it would be proper at this time, when the province was in a state of heat and fermentation. A popular Assembly would not tend to allay that heat. The privilege of Habeas Corpus was ordered by the Legislative Council of Quebec, to be granted to the inhabitants; so that they had no reason to complain in that particular. He was not pleased with the motion in its present form.

*Mr. Fox* ridiculed the idea that Parliament was not ripe for the formation of a constitution for Quebec. Could it be supposed that, after that province had been in our possession for the space of 25 years, sufficient information had not been procured to authorize a complete determination upon what laws were most expedient for the government of it? He charged His Majesty's Ministers with great neglect, and even with being unfit for the offices they held as they had not taken the porper steps to accelerate this business.

*The Chancellor of the Exchequer* vindicated himself from the charge of neglect; and *Mr. Fox* rejoined.

*Mr. Marsham* thought the House ought to pass a bill immediately for extending the Habeas Corpus Act to Quebec; that it might no longer be considered as a mere favour or indulgence to the inhabitants, but as a matter of right. He also proposed, that after the Chairman should have left the chair, the House should pledge itself to enter fully into this business early in the next session.

*Mr. Sheridan* regarded the Ministry as culpable, for having so long neglected the proper adjustment of the laws for the province of Canada.

*Mr. Alderman Watson* remarked, that great inconveniences arose in Canada from the bad administration of bad laws, and hoped that the British laws, in general would be extended to that province.

*Mr. Martin* was convinced of the propriety of coming to a speedy determination on this head.

*Sir James Johnstone* was friendly to the prayer of the petitions; but wished that the discussion might be postponed till next session.

*Mr. Burke* agreed to the motion.

Mr. C. L. Smith, Sir W. Dolben, Sir Herbert Mackworth, and Sir Watkin Lewes, also spoke on the occasion.

*The Chancellor of the Exchequer* having moved, that the Chairman leave the Chair, instead of putting the question on Mr. Powys's motion, a division took place; when the numbers were, for the Minister's motion 104, against it 39, majority 65.

*Mr. Powys* then moved, that this House will, early in the subsequent session, take into consideration the petitions from Quebec." The London Chronicle, May 15-17, 1788. Vol. 63 p. 479.

It will, however, be absolutely necessary that it should be resumed very shortly after the next meeting, and it will, of course, be a matter of great importance to His Majesty's Servants, that they should be previously prepared to enter into a full discussion of the business, and to propose such arrangements as may be found to be expedient for removing every just and reasonable cause of complaint that may exist among His Majesty's Subjects, of any description whatsoever, who are Inhabitants of that Province.

The variety of applications which have from time to time been transmitted from thence upon this business, of so opposite a tendency to each other, render it extremely difficult to fix upon any Arrangements calculated to satisfy all the Parties interested in, or connected with it;[1] His Majesty's Servants however, are desirous to give the matter a full consideration, and that they may be the better enabled to form a competent judgment of the steps adviseable to be taken, they are solicitous of obtaining from Your Lordship a full and impartial account of the different Classes of Persons who desire a Change of Government, as well as of those who are adverse to the Measure, specifying, as nearly as it can be ascertained, the Proportion of Numbers and Property on each side in the several Districts ; and, That your Lordship at the same time should state in what manner, either the interests, or influence of the latter, might be affected by any alteration, and what is the Nature and grounds of their apprehensions from the Introduction of a greater Portion of English Law, or of a System of Government more conformable to that established in other British Colonies.

In particular, They wish to be informed from what Causes the objection of the Old Canadian Subjects[2] to an House of Assembly chiefly arises: Whether, from its being foreign to the Habits and Notions of Government in which they have been educated, or, from an apprehension that it would be so formed as to give an additional Weight to the New Subjects, and lead to the introduction of Parts of the English Law which are obnoxious to them; or, from an idea that being invested with a Power of Taxation, it would eventually subject their Property to Burthens from which they are at present exempted; In like manner, whether the Objections which appear to exist to a farther Introduction of Trial by Jury, arise either from Prejudices against the Nature and Mode of such a decision, or from the difficulty of finding Jurors properly qualified, and the inconvenience to Individuals of the necessary Attendance ; or from the Notion of this species of Trial being necessarily coupled with Modes of Proof and Rules of Law, different from those to which they are accustomed.

Though several of these points have already been noticed by Your Lordship in some of your Letters to me, and in the Papers which accom-

[1] The most typical of these petitions have been reproduced in this volume.

[2] Though the British element were commonly referred to as the "old," or "ancient subjects," and the French Canadians as the "new subjects," yet in this instance Lord Sydney, by the introduction of the word "Canadian," evidently refers to the French Canadians.

panied them, yet His Majesty's Servants do not think that they are sufficiently explicit to enable them to form a decided opinion.

The anxiety of His Majesty's Servants to be perfectly informed with regard to all these matters as soon as possible, has induced them to send out an Extraordinary Packet Boat, and they are in hopes of receiving from Your Lordship upon her return, a full communication of the Sentiments entertained upon these several heads of enquiry, and which communication they wish to be made in a manner that may be proper to be laid before Parliament, at the next meeting.

I find, upon an examination of the Plans transmitted by Your Lordship's predecessor,[1] that the most considerable part of the disbanded Troops and Loyalists who have become Settlers in the Province since the late War, have been placed upon Lands in that part of it which lie to the Westward of the Ceders,[2] and beyond those Lands (excepting only Detroit and its Neighbourhood) which are granted in Seigneurie ; as these People are said to be of the number desirous of the Establishment of the British Laws, It has been in Contemplation to propose to Parliament a division of the Province, to commence from the Boundary Line of the Seigneurie granted to Monsieur De Longueil, and to take in all the Country to the Southward and Westward in the manner described in the inclosed paper. But, before they take any step towards the execution of this measure, they are desirous of receiving the advantage of Your Lordships opinion how far it may be practicable or expedient ; or, whether any other line or mode of separation would be preferable. Your Lordship will however understand, that it is The Kings intention that the New Settlers in that part of the Province who now hold their Lands upon Certificates of Occupation, shall, at all events, be placed upon the same footing in all respects, as their Brethren in Nova Scotia and New Brunswick, by having their Lands granted to them in free and Common Soccage, with a Remission of Quit Rents for the first Ten Years; and Instructions will be prepared accordingly, as soon as Your Lordship's opinion upon the plan abovementioned shall be obtained.

With a view to the execution of the Plan in question, it will be necessary for you to consider, previously to your Report upon it, what sort of Civil Government ought to be formed for its internal arrangement, & whether the Number and description of the Inhabitants and other Circumstances are such as do, or do not, make the immediate Establishment of an Assemby within this district, practicable and adviseable. At all events It will be natural, as the greatest Part of these New Settlers are attached to the English Laws, that that System should be introduced as the general Rule, with such Exceptions or Qualifications as particular and local Circumstances may appear to require ; At the same time Your Lordship will attend to the situation to which the Old Canadian Settlers at Detroit would be reduced, provided it may be found expedient, in consequence to the Information

[1] General Frederick Haldimand.
[2] Referring to the Cedars and Coteau rapids on the St. Lawrence below lake St. Francis.

which the King's Servants expect to receive from Your Lordship, (and by which you will understand they mean in a great degree to be guided) to resist the Application for any Change of the Constitution of the remaining part of the Province ; and, Your Lordship will also consider, in case of such a determination, in what part of the Province within the reserved limits, the Settlers at Detroit, if they should desire to be removed, might be accommodated with Lands the best suited to their advantage.

I am &ca
SYDNEY

## DORCHESTER TO SYDNEY.[1]

N° 94 Quebec 8th November 1788.

My Lord,

The Province of Quebec consists at present of seven districts or counties ; Quebec and Montreal in the central parts, Gaspe at and near the mouth of the Saint Lawrence, and the country, west of Point au Boudet, divided into the four districts of Luneburg, Mecklenburg, Nassau, and Hesse. The Canadians, or new subjects, occupy the districts of Quebec and Montreal, and some are also to be found in the districts of Gaspe, and Hesse. The three districts of Luneburg, Mecklenburg, and Nassau, are inhabited only by the loyalists, or old subjects of the Crown. The Commerce of the country being chiefly carried on by the English occasions a considerable mixture of inhabitants in the towns of Quebec and Montreal, nearly in the proportion of one British to two Canadians. Some of the former are also settled at Three rivers, Terrebonne, William Henry, Saint Johns, and the entrance of Lake Champlain, and a small number are dispersed among the Canadians in the country parishes ; the fur trade has collected some hundreds at Detroit, as the fisheries have at the bay of Chaleurs, and other parts of the district of Gaspe. The proportions of British and Canadians in the two districts of Quebec and Montreal, exclusive of the towns, may be about one to forty, in the same districts, inclusive of the towns, one to fifteen, in the district of Hesse one to three, in the district of Gaspe two to three, and in the whole province, taken together, about one to five.

A change of the laws and form of government, by the introduction of an assembly, is chiefly promoted by the commercial part of the community, in the towns of Quebec and Montreal. The Canadian Habitants, or farmers, who may be stiled the main body of the freeholders of the Country, having little or no education, are unacquainted with the nature of the question, and would, I think, be for, or against it, according to their confidence in the representations of others. The Clergy do not appear to have interfered. But the Canadian gentlemen in general are opposed to the measure ; they object to the introduction of a body of new laws, to the extent and tendency

[1] Canadian Archives, Q 39, p. 109. In this we have Dorchester's reply to the inquiries of Lord Sydney in the foregoing despatch.

of which they are strangers; they express apprehensions of much disquietude among the people from the introduction of an assembly, and conceive that the low state of learning and knowledge in the country would lay them open to the pursuit and adoption of wrong measures, and to dangers, which a more enlightened people would not be exposed to. The fear of taxation, I take for granted, is among the motives of those, who are adverse to the change, and would no doubt strongly influence the sentiments of the common people, if they should come to consider the merits of the question. The objections, which appear to exist to a farther introduction of the trial by jury, arise partly from prejudice, and partly from an idea, that the choice would be narrow, and render it difficult to find jurors, totally disinterested.

In addition to these observations, it may be proper to mention, that the population of this country is chiefly confined to the margin of the waters from the western side of the gulph of Saint Lawrence in the district of Gaspe, to the settlements at and above Detroit, a chain of not less than eleven hundred miles ; and that, though the ancient settled parts of the districts of Quebec and Montreal, from Kamaraska to Point au Boudet (comprehending about three hundred and seventy miles of the above line) may find no great burthen in the expence of a representation, it may be otherwise with the inhabitants newly set down in Gaspe, Luneburg, Mecklenburg, Nassau, and Hesse, and that the inconveniences and charges of assembling, from parts so distant, would be increased by the nature of the climate, which renders the roads for several months in the year difficult, if not impracticable.

A division of the province, I am of opinion, is by no means adviseable at present, either for the interests of the new, or the ancient districts, nor do I see an immediate call for other regulations, than such as are involved in the subject of the general jurisprudence of the country. Indeed it appears to me, that the western settlements are as yet unprepared for any organization, superior to that of a county. This has lately been given to them, and will, I trust, answer their present wants, if I except Hesse, whose commercial and complicated affairs call for a particular provision, now under the consideration of a Committee of the Council. But though I hold a division of the province at present inexpedient, yet I am of opinion, that no time should be lost in appointing a person of fidelity and ability, in the confidence of the loyalists, to superintend, and lead them, and to bring their concerns with dispatch to the knowledge of government, under the title of Lieutenant Governor of the four western districts above named.[1]

Should a division of the province notwithstanding be determined by the wisdom of His Majesty's Councils, I see no reason, why the inhabitants of those western districts should not have an assembly, as soon as it may be organized without detriment to their private affairs, nor against their having so much of the English system of laws, as may suit their local situation,

[1] Sir John Johnson was appointed to this position.

and condition. But in this case particular care should be taken to secure the property and civil rights of the Canadian settlers at Detroit, who, I am convinced, would not chuse to emigrate, though good lands might be given them in the lower parts of the province. But, should they chuse to move, it would be attended with much inconvenience, as would their being left insulated, and attached to the district of Montreal.

With respect to proper limits for the new government, in the event of a separation, I would recommend those described in the annexed paper, which will comprehend all the settlements of the loyalists on the river Saint Lawrence above Point au Boudet, and those also lately laid out for them on the south side of the Uttawas river.

I am with much respect and esteem

Your Lordship's most obedient, and most humble servant

DORCHESTER

The Right Hon$^{ble}$ Lord Sydney

THE PROPOSED LINE OF DIVISION.

To commence at a stone boundary on the north bank of the Lake S$^{t}$ Francis, at the cove west of pointe au Bodet, in the limit between the township of Lancaster, and the seigneurie of New Longueuil, running along the said limit in the direction of North, thirty four degrees west, to the westernmost angle of the said seigneurie of New Longueuil, thence along the north western boundary of the seigneurie of Vaudreuil running north twenty five degrees east, until it strikes the Ottawas River, to ascend the said river into the lake Temiscaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.

D

Endorsed : In Lord Dorchester's N$^{o}$ 94 of 8$^{th}$ Novem$^{r}$ 1788

## FINLAY TO NEPEAN.[1]

QUEBEC 9$^{th}$ february 1789.

Dear Sir

The great question, whether a House of Assembly would contribute to the welfare of this Province in its present state ? has been so fully discussed that the subject is entirely exhausted—both old and new subjects here, who have openly declared their sentiments, now composedly wait the decision of the British Parliament with respect to Canadian Affairs.

It was, in my humble opinion, a wise measure to endeavour to draw from every quarter as much information as could possibly be had—there has not been any restraint on the people—they have said all they had to say.

[1] Canadian Archives, Q 43-2, p. 714.

SESSIONAL PAPER No. 18

The petitions and counter petitions to His Majesty, (which have no doubt ere now reached the foot of the Throne) have been published in our Gazette.

I am ignorant of Lord Dorchester's way of thinking relative to a house of the representatives of the people ; I do not believe that he has confided his opinion on that head to any person on this side of the Atlantic.

Everything considered relative to the present situation of this Province, I confidently believe that a constitution founded on the 12th Article of His Majesty's instructions to the Governor General,[1] would be the fittest for this Country in its actual state.

We might make the people entirely English by introducing the English language. This is to be done by free schools, and by ordaining that all suits in our Courts shall be carried on in English after a certain number of years.

I have never been able to perceive why the Laws of England should not be the rule for the decision in all cases of personal actions grounded upon debts, promises, contracts and agreements whether of a mercantile or other nature, and also of wrongs proper to be compensated in dammages. Nor have I been able to see that it would be expedient to alter the Laws, Customs and usages that have hitherto in Canada governed in all controversies respecting Titles of lands, and the tenure, descent, alienation, incumbrances, and settlements of real Estates, and the distribution of personal property of persons dying intestate.[2]

The advocates for a House of Assembly would say that this Plan stands on too narrow a bottom : nothing short (say they) of Power to Tax can ever give a spur to Trade, or rouse the indolent habitant to industry—and as England holds her Colonies for the sole purpose of extending her Commerce, the power to raise money must be granted to the people in this Province to render it of real utility to the Parent State.

Some people remark that the Canadians were not consulted before the Criminal Law of England was introduced into this Province—it was given them for their good : it may therefore (they conclude) be well left to the wisdom of a British Parliament to make all the changes in the Constitution of this Country now become necessary from the acquisition of so many thousands of His Majesty's natural born subjects as settlers among us.

The Mass of the Canadians are not yet qualified to Judge of the matter—they could not reason on the proposed change: they'll be happy under any well regulated Government, and perfectly contented whilst they remain exempted from Taxes, provided no alarm shall be sounded to rouse apprehensions touching the safety of their religion.

The Seigneurs, I presume, will ever oppose proposals tending to alter the present System, as I believe that they conceive their consequence depends on the support of that System : but of what consequence can a

[1] See instructions to Lord Dorchester of 1786, article 12, p. 820.
[2] These are the distinctions made in the 12th article of the Instructions to Lord Dorchester in 1786, referred to in the previous paragraph. For the 12th article, see p. 820.

Canadian Seigneur be in an English *commercial* Province ! He enjoys no particular privileges in the Society—He has no legal command over his tenants, nor are they in general look'd up to for their superior knowledge Their fortunes are for the most part but very slender : yet you may have seen by their late publications[1] here that they pretend to a consequence which but few (not of that class) are willing to allow them.

Among the number there's sensible well informed Gentlemen who are in estimation with all ranks of the people, but it would be as hard to root out the prejudices of an Englishman in favour of the British Constitution, as it will be to undo the predilection that a Canadian gentleman has for that form of Government which we found established here at the conquest of the Country.

A Canadian Seigneur speaks thus ; "The Laws, ancient usages, and "customs of our Province would soon be abolished if the King's natural born "subjects should succeed in their applications for a House of Assembly. "We wish to preserve our Laws in full force to the end of time. We have "an undoubted claim to share all places of honor or profit in the service "of Government in proportion to our numbers. That we have uniformly "adhered to these demands, let our addresses of 1784[2] and 1788[3] bear "testimony."

On these remarks, I will Just observe, that as the house of Representatives would be composed of a Majority of Canadian free-holders, they would not alter the Laws without being fully satisfied that they stood in need of alteration.

The King makes no distinction between a man born in Canada and one born in middlesex—we are all His Majesty's subjects—He is the fountain of honor—His Royal favor will extend to the worthy, be they new, or be they natural born subjects.

I have the honour to be
Dear Sir
Your obliged and very faithful servant.

HUGH FINLAY

Evan Nepean Esqr.

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[1] In consequence of the debate in the British Parliament, of May 16th (see note p. 955) and the engagement of the Ministry to take up the question of the Canadian constitution during the following session, some of the Canadian Gentry sent a petition to the King, through Lord Dorchester, dated October 13th, 1788. See Q 38, p. 365. In this they claimed that though a number of French Canadians had joined with the English element in petitioning for a change of government, yet they did not represent "the great Proprietors of the Nation." Hence, on behalf of themselves and a number of their compatriots, from whom they claimed the power to sign the petition on their behalf, they prayed for the complete maintenance of the old French laws and institutions. This, in turn, brought out a memorial from those in favour of a change of constitution, which entered into a detailed criticism of the claims and pretensions of those who had signed the petition of October 13th. This memorial which was accompanied by several additional papers, was dated December 5th, 1788, and is given in Q 40, p. 17. Other petitions, counter petitions, and memorials followed, the controversy chiefly centering around the relative importance, numbers, wealth and enterprise of the rival factions. Most of these documents will be found in vol. Q 40. On neither side did they add anything of importance on the constitutional issue, beyond what has already been presented.

[2] For the petitions of 1784, see pp. 742 and 754.

[3] See note 1, above.

SESSIONAL PAPER No. 18

# ORDINANCE *RE* PROCEEDINGS IN THE COURTS OF CIVIL JUDICATURE.[1]

The Quebec Gazette, Thursday May 7th 1789.

## ANNO VICESIMO-NONO GEORGII TERTII REGIS.

### Chap III.

Passed 30th April 1789. J. Williams, C.L.C.

An Act to continue the Ordinances, regulating the Practice of the Law, and to provide more effectually for the Dispensation of Justice, and especially in the new Districts.

Continuation of the Two former Ordinances.

1st Be it enacted by His Excellency the Governor and the Legislative Council, and it is hereby Enacted by the Authority of the same, That the Act intituled, "An Ordinance to regulate "the Proceedings in the Courts of Civil Judicature, and to "establish Trials by Juries in Actions of a Commercial nature, "and Personal Wrongs, to be compensated in Damages,"[2] passed in the Twenty fifth year of His Majesty's Reign, together with the Act continuing the same, with additional Regulations, passed in the Twenty seventh year of His Majesty's Reign,[3] be continued until the 30th day of April, which will be in the Year of Our Lord One Thousand seven hundred and ninety-one and no longer.

Qualification of Jurors in the Five new Districts.

2nd And better to adapt the general Provision to the present condition of the Province, lately divided into the Five new Districts of Gaspé, Luneburg, Mecklenburg, Nassau, and Hesse, Be it further Enacted by the same Authority, That it shall be no Exception or Challenge to a Juror, on any Inquest or Trial in either of the said new Districts, that he is not a Freeholder, if such Juror being otherwise qualified, shall have been for one Year the actual Occupant of One hundred Acres of Land, under the Permission or Authority of the Government, within the District for which he is summoned, and shall have had a Certificate thereof, signed by the Governor or Commander in Chief for the Time being, or under the Signature of the Surveyor General, or Deputy Surveyor General, or any Deputy of them, or either of them.

Powers of the First Judge for the District of Hesse.

3rd And be it also Enacted by the same Authority, that until the Bench of the Court of Common Pleas for the District of Hesse shall have Three Judges duly appointed to officiate

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[1] Canadian Archives, Q 62A-2, p. 647. See also Ordinances of Quebec, 1763-1791, p. 225. It will be observed that this Ordinance makes no substantial amendment to the general Ordinance of 1787, except in so far as it makes provision for the special conditions of the new Western Districts, and especially that of Hesse, within whose jurisdiction lay most of the western trading posts.

[2] See page 780.

[3] See p. 858.

thereon, all the Powers and Authorities of the whole number shall be vested in such Person as shall have a Commission to be the First Judge thereof ; any other Law, Act, or Ordinance to the contrary notwithstanding.

On Criminal Prosecutions in the new Districts, execution to be Suspended when, &c

4th And on Account of the remoteness of the said New Districts, and for the security of the Subject, and to prevent long Imprisonments, and to lessen the public Charges in Criminal Prosecutions,—Be it further Enacted by the same Authority, that on all Trials to be had in either of the new Districts before Commissioners of Oyer and Terminer or General Gaol Delivery, when the Chief Justice of the Province may happen not to be one, the Execution of the Sentence or Judgment of the Court shall be suspended until the Pleasure of the Governor or Commander in Chief for the Time being shall be signified thereon, by Warrant under his Hand and Seal at Arms.

Copies of the Proceedings to be transmitted to the Governor.

5th And to the End that the Government may have full Information of the Proceedings of the said Courts of Criminal Jurisdiction, Be it also Enacted by the same Authority, That it shall be the Duty of the said Courts, with all convenient Speed, to transmit to the Governor for the Time being, not only copies of the Indictment, Information, or Charge, and of the Plea, and other Proceedings, in every Cause before them had, but of the written and parol Testimony read and given to the Jury, and the Scope and Substance of the Points ruled in Evidence, and of their Charge to the Jury, and Copy of the Verdict, and of every material Transaction in the Cause, together with such Observations as they may think proper to make on every such Cause and Trial, and the whole under the Signatures of the Majority of the Judges before whom every such Trial was had.

Proviso,

Provided always, and be it nevertheless Enacted by the same Authority, That it shall not be necessary to make such Report of the Proceedings, nor to stay the execution of the Sentence or Judgment in any Case where it shall not extend to Life or Limb, nor to any greater Fine, Penalty, or Forfeiture, than the Sum of Twenty five Pounds Sterling, Money of Great Britain.

Cases where Execution may be Stayed upon Fines &c adjudged.

And wherever so great a sum shall be adjudged for a Fine, Forfeiture, or Penalty, in any Court of Sessions of the Peace, to be held in either of the said new Districts, Execution shall in like manner be stayed until such Information is given to the Government, by the Major part of the Justices before whom the Trial was had, or Judgment given, as is above directed to be given by the Courts of Oyer and Terminer, and General Gaol Delivery, except that it shall not be necessary in such Court of Sessions to reduce to Writing all the Testimony that may be

Exception.

given to the Jury on Trials before them had, but that instead thereof it shall suffice to report only the main Scope and Substance thereof, and that the execution in every Case to the Amount aforesaid, given by either of the Courts of Sessions of the Peace of the said New Districts, shall also await the Signification of the Pleasure of the Governor, or Commander in Chief in the manner aforementioned.

Persons convicted of a Capital Offence in the new Districts may be conveyed to any of His Majesty's Prisons.

6th And be it also Enacted by the same Authority, That until the new Districts aforesaid shall be furnished with safe Gaols and Prisons, and as often as the Majority of the Commissioners of such Courts of Oyer and Terminer, and General Gaol Delivery, sitting therein, shall conceive it to be unsafe to continue within their District any Prisoner convicted before them of a Capital Offence, they may take course for conveying him to such other of His Majesty's Prisons as they may designate, for his being safely kept to abide the Judgment of the Law; and the Sheriff and Gaoler, Bailiffs, and Officers, to whom any such Traitor or Felon shall have been delivered, shall be respectively answerable for the Prisoner, and upon his Escape shall severally be subject to all such Punishments, Pains, Penalties, and Forfeitures, as they would have respectively incurred, had such Prisoner received such Judgment upon a Conviction for the like Offence committed within the Bailiwick for which they serve.

7th And whereas the Detention of Prisoners until the sitting of the Court of King's Bench, or the sitting of Commissioners of Oyer and Terminer, and General Gaol Delivery, hath been very burthensome to the Public, and is likely to be encreased by the Insufficiency of the Gaols in the old Districts, and the total want of them in the new Districts ; and it often happens that Persons committed for simple Larcencies are either acquitted, or only found guilty of Petty Larcency :

Petty Larcency extended Twenty Shillings Sterling.

Be it therefore Enacted by the same Authority, That Simple Larcency, where the goods stolen shall not in value exceed Twenty Shillings Sterling Money of Great Britain, shall be deemed and adjudged only Petty Larcency; and whenever any Person shall stand committed to Gaol for no higher Offence than a Breach of the Peace, or Petty Larcency, and shall not within Forty-eight hours after his Commitment find Bail sufficient, in the Opinion of any One Justice of the Peace, for his Appearance at the next Sessions of the Peace, for the District where the Offence is charged to be committed, it shall be Lawful for any Three Justices of the Peace (One of whom shall be of the Quorum) to meet and cause the Offender to be convened before them, at some Public and convenient Place, and then and there, or at

such other time and place to which they may adjourn to hear the charge and Defence, with the Evidence for and against the Prisoner, and to determine the same, and upon their conviction of the Guilt of the Prisoner to give Judgment against him for such Corporal Punishment (not extending to Life or Limb) as they, or the Major Part of them shall in their Discretion think adequate to the Demerit of his Offence, and that after the execution thereof the Offender shall be discharged; but if he shall not have been a stated Resident of the Province for Twelve Months preceding his Commitment and shall in Twenty Days after his Discharge be found within the said District, and shall wilfully have remained within the same, it shall be lawful for any one Justice to commit him to Prison, and for Three Justices to proceed against him in manner aforesaid, and to adjudge him to such further Correction (not extending to Life or Limb) as they in their Discretion shall think proper, unless he shall find good and sufficient sureties, in the Opinion of the Justices by whom he shall be tried, to recognize in such sum as they shall appoint for his good Behaviour for seven Years, on giving which he shall be set at Liberty, and the Recognizance be filed with the Clerk of the Peace.

Three Justices of the Peace (one being of the Quorum) empowered to hear & determine Breaches of the Peace and Petty Larcency.

And all Gaolers, Constables, and Peace Officers, when thereunto required, shall be aiding and assisting to the Justices employed in the said Service under the Penalty of Ten Shillings for every Default, to be recovered before any one Justice of the Peace in a Summary way, by Warrant of Distress and sale of the Offender's goods and Chattels, returning the overplus to the Owner, if any there be, after deducting the Penalty and the Costs, one Half of which Penalty shall belong to the Person suing for the same and the other to the Crown, and be forthwith paid by the Officer executing the said Warrant into the Hands of His Majesty's Receiver General.

Gaolers & Peace Officers to aid and assist.

8th And inasmuch as the Annual Collection of the Trade will require Yearly Circuit Courts to be held in the Northern Parts of the District of Hesse :

Be it also Enacted by the same Authority, That it shall be lawful for the Governor or Commander in Chief for the time being, by Proclamation to be issued under the Great seal of this Province, by and with the advice of His Majesty's Council, to ascertain the Terms of such Sessions, and the Cognizance of the Causes there to be tried and adjudged, and the mode of proceeding therein, and whatever shall appear to be requisite for the effectual Administration of Civil Justice at such Circuit Courts, or the perfecting the Business thereof in any other Court, of the

Terms &c for The District of Hesse, how to be ascertained.

said, or any other District ; this Act, and any other Law, Usage, or Custom to the contrary notwithstanding.

Jurisdiction of the Civil Courts in the District of Hesse, relating to Domicile.

9th And be it further Enacted by the same Authority, That in Civil Actions to be instituted in the District of Hesse, it shall not be a Ground of Exception of any kind whatsoever to oust the Courts of the said District of Jurisdiction, that the Cause of Action arose out of the same, or that by Reason of the Domicile of the Defendant it ought to be brought elsewhere, but that all the Proceedings in Causes there instituted, and the Judgment and Execution thereon, shall be deemed and adjudged to have the like Force, Effect, and Consequences, in all Respects whatsoever, as if the Cause of Action and Ground of Defence had arisen, and all Transactions relating to the same had happened within the said District of Hesse.

10th And forasmuch as, for want of a regular Magistracy, and an Establishment for the convenient Dispensation of Justice in the District of Hesse, Attempts may be made to elude the Payment of just Debts, under Pretext of the Laws of Prescription or Limitation, which presuppose a state of general Tranquillity, and the easy and free Course of Justice :

Particular Limitation of Actions in the District of Hesse.

Be it also Enacted by the same Authority, That every such Plea or Defence under the Laws of Prescription or Limitation, be adjudged to be null and void in every cause to be instituted in the Courts of the said District of Hesse, except in Actions and Cases accruing posterior to the first day of January which will be in the year of Our Lord One Thousand, seven hundred and ninety :

Proviso.

Provided always, And be it Enacted, That nothing herein contained shall be construed to revive a Demand for cause of Action arisen prior to the First Day of January, in the Year of Our Lord One Thousand seven hundred and Eighty-Six.

11th And whereas the Western District of Luneburg, Mecklenburg, Nassau, and Hesse are, and also the District of Gaspé probably will be, chiefly Inhabited by Persons born within the Ancient Dominions of the Crown of Great Britain.

Proofs admissible in the Five New Districts.

Be it further Enacted by the same Authority, That in Civil Causes hereafter to be tried or Adjudged and determined in either of the said New Districts, where the Title to the Freehold shall not come into Question, no Proof offered in such Cause shall be deemed to be inadmissible, that would be sufficient to sustain the Point for which the same is offered, either by the ancient or present Laws of the Province, or by the Laws of England.

Sale of Moveables in the new District

12th Where Moveables shall be taken in Execution by the Sheriff of the District of Hesse, Luneburg, Mecklenburg, or

Nassau, or Gaspé, he shall cause such seizure to be published at the Church Door of the Parish immediately after Divine Service, on the First Sunday succeeding such Seizure ; or if there be no Church in the Township or Parish then such seizure shall be notified by Publication or Advertisement in Writing affixed to the Door of the Court House of the District, and also at the nearest Grist Mill, as soon as may be after such Seizure ; and the said Notification shall design the Day and Place where and when he means to proceed to the Sale thereof, not protracting such Sale beyound Fourteen Days from the Date of such Publication : And when Lands and Tenements shall be taken in Execution by the Sheriff of either of the said Districts, he shall advertize the Sale by Three several Publications in Writing, to be fixed at the Door of the Court House of the District, and in some ostensible Place in the Office of Clerk of the Court whence the Execution issued, and at the nearest Grist Mill, such Notice to be renewed the First Monday of Three Successive Months preceding the Sale, which shall not take Place in less than Four Months after the Date of the First Publication.

Sale of Real Estates.

13th Be it further Enacted by the same authority, That in all Personal Actions to be instituted in any of the Districts in this Province, it shall not be a legal Exception that the Cause of Action arose out of such District, or that by reason of the Domicile of the Defendant it ought to be brought elsewhere ; but that all the Proceedings in such Actions, and the Judgments and Executions thereon, shall be deemed and adjudged to have the like Force and Effect in every Respect as if the Cause of Action and Ground of Defence had arisen, and all Transactions relating thereto had happened, in the District where the Action is instituted, any Law, Usage, or Custom to the Contrary notwithstanding.

In Personal Actions no Exception to be taken by Reason of the Domicile of the Defendant.

14th And be it enacted by the same Authority, that the Course and Power given by the said Act, intituled, "An Ordinance to regulate the Proceedings in the Courts of Civil Judicature, and to establish Trials by Juries in Actions of a Commercial Nature and Personal Wrongs to be compensated in Damages," for perfecting the Execution of a Judgment out of the District where the same was rendered, shall be pursued in every old or new District of the Province.

Executions to issue from one District to the other.

15th And that Parties adjudged in the said New Districts may not be deprived of their Right and Benefit of Appeal :

Appeals from the new Districts.

Be it further Enacted by the same Authority, That the giving security as heretofore used on the bringing of a Writ of Appeal, shall as effectually suspend Execution in Causes of the said Districts, as in the old Districts on the actual Production

of a Writ of Appeal, such Appellant in all other Respects conforming to the Law of Appeals as it now stands, and suing out, within Twenty Days after Judgment, an Office Copy of the Proceedings in the Cause adjudged; which to prevent Delays, shall be as effectual before the Appellate Jurisdiction as if transmitted according to the present Law and Usage in Appeals from the Common Pleas Courts of the old Districts.

DORCHESTER

## GRENVILLE TO DORCHESTER.[1]

(*Private and Secret.*)

WHITEHALL 20th Oct$^{r}$ 1789.

The Right Hon$^{ble}$
Lord Dorchester,
&c &c &c.

MY LORD,

The public dispatches[2] of this date will inform your Lordship of the intention of His Majesty's Servants, with respect to the plan to be proposed in Parliament for altering the present Constitution of Canada.—I feel that it is due to your Lordship, that I should inform you of the grounds on which this resolution has been adopted, in a more particular manner than the nature of a public dispatch appears to admit ; and, for that purpose, I inclose to your Lordship in confidence, a paper containing the heads of those suggestions, on which the present measures are founded.[3] I am persuaded that it is a point of true Policy to make these Concessions at a time when they may be received as matter of favour, and when it is in Our own power to regulate and direct the manner of applying them, rather than to wait 'till they shall be extorted from Us by a necessity which shall neither leave Us any discretion in the form, nor any merit in the substance of what We give.

I am ignorant how far your Lordship's Opinion coincides with the ideas stated in the inclosed paper. One point I observe, and have alluded to in my public Letter, on which you have stated Objections ; but I think they are such as apply to the present state of the Province, rather than to what it would be under a different form of Government.

With regard to the remainder, it would certainly give me great satisfaction if I could find the opinions which I entertain confirmed by your Lordship's experience and knowledge of the Subject.

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[1] Canadian Archives, Q 42 p. 92. William Wyndham Grenville, a cousin and favourite of Pitt, the Prime Minister, resigned the position of Speaker of the House of Commons to become Secretary of State for the Home Department, in June 1789, in succession to Lord Sydney. He was raised to the Peerage as Lord Grenville in 1790. In 1806 in coalition with Fox he became head of the famous "Ministry of all the Talents."

[2] See below, p. 987.

[3] This paper is evidently the one whlch follows this despatch. See p. 970.

But, in all events, I have not the smallest doubt of your Lordship's wish to co-operate in carrying into execution, in the most advantageous manner, that Plan which Parliament shall ultimately adopt, on a subject which has been so long before them ; and I trust you will see the importance in this point of view, of your delaying your visit to this Country, 'till after the new Government shall have been put in motion.

There is one subject adverted to in the paper which I now enclose, of which no mention is made, either in the Bill now transmitted to your Lordship, or in the dispatch which accompanies it. What I mean is, the suggestion relative to the possibility of making such reservations of Land adjacent to all future Grants, as may secure to the Crown a certain and improving Revenue.[1]—A Measure, which, if it had been adopted when the Old Colonies were first settled, would have retained them to this hour in obedience and Loyalty. I confess that I am very particularly anxious to find myself sufficiently informed to be able to recommend to His Majesty, the adoption of some system of this nature, in His remaining Colonies, and I should therefore feel myself obliged to your Lordship, if you would consider it with attention, and state to me your Sentiments, both as to the general principle, and as to the best mode of carrying it into effect, in the different Provinces under the King's Government in North America.

Your Lordship will perceive, by the different accounts, which you will receive from Europe, that the state of France is such, as gives Us little to fear from that quarter in the present moment. The opportunity is therefore most favourable for the adoption of such measures as may tend to consolidate Our strength, and increase our resources, so as to enable Ourselves to meet any efforts that the most favorable event of the present troubles can ever enable her to make.

I am &c

W. W. GRENVILLE.

## DISCUSSION OF PETITIONS AND COUNTER PETITIONS *RE* CHANGE OF GOVERNMENT IN CANADA.[2]

View of the several Points, prayed for by the Petitions, in favor of a change of Government in Canada; together with the objections stated to them by the Counter-Petitions, And the Remarks which occur upon them.

The several Petitions which are now to be examined, have been transmitted from Canada, at different periods, since the Year 1784.[3] The con-

[1] Referring to the proposed Crown Reserves as outlined in the following paper, See p. 986.

[2] Canadian Archives, C.O. 42. vol. 21, p. 55. This is the accompanying paper referred to in the foregoing dispatch. It is without date or signature. The compiler of it had apparently not lived in America, but was thoroughly familiar with the documents relating to Canada and the late colonies. While representing the views of the British Government with reference to the future government of Canada in particular and the remaining British American colonies in general, it gives expression, also, to the prevailing official view of the period as to the causes of the loss of the American Colonies, and indicates the reaction of that view upon the policy of the Government towards the remaining British Colonies.

[3] The references to petitions throughout this paper are practically confined to the petition of November 1784 before the House of Assembly. (see p. 742) and the objections to that petition. (see p. 754).

sideration of them has been brought forward in Parliament in the two last Sessions, but has been postponed, at the request of Government, in order to give time to the Kings Ministers, to obtain from Lord Dorchester, such information as was thought necessary, & to satisfy their own Judgment, on a point, of so much importance, as the future Government of the most considerable of the King's remaining provinces in America.

By a Vote of the House of Commons, agreed to, at the conclusion of the Session of 1788, & renewed in the present year, Parliament is pledged to an early consideration of this subject; & Government, cannot avoid coming forward, in the next Session, either, with some proposal relating to it, or, with a decided opinion, that nothing should be done in it.

The Petitions are supported chiefly by the British Settlers, who were established in the province of Quebec, previous to the American War,

There are some of the Canadian, or French inhabitants, who have signed the Petitions, but Lord Dorchester, in his Letter, dated 3d Septr 1788,[1] speaking of the sentiments of the Canadians in general, says, that the Habitants or Farmers who compose the Bulk of the Community are unacquainted with the nature of the Question, & indifferent to it; that the Clergy do not appear to have interfered, & that the Canadian Gentry or Noblesse, in general, oppose it.

The whole population* of the Province may be taken at about,—

| | Persons |
|---|---|
| 120, or 130,000. | |
| Of whom British Settlers before the American War | 6,000 |
| Loyalists, chiefly settled in the Upper Country | 6,000 |
| Canadians | 108,000 |

Among the latter, the Noblesse are supposed in the whole, to amount to about 130.

These last are, for the most part, in inconsiderable circumstances, few of the Seigneurs having above 2 or 300 pr Annum, & many, not so much; and the Value of the Seigneuries is continually decreasing, on account of the Custom of Canada, by which the Landed Property is divided amongst all the Sons of the Seigneur, at his decease.

From the great, & continued influx of New Settlers, & from the resources of the country itself, there is every reason to believe, that the wealth & population of the Province are rapidly increasing; but the in-

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* This Computation is taken from the best accounts that could be procured here, but it is probably not accurate as Ld. Dorchester states the proportion of French to English to be about 5 to 1 in the whole province.

[1] This is evidently an error in reference. It was the letter of Sydney to Dorchester, asking for information on these subjects, which was dated 3rd September 1788 (see p. 954). Lord Dorchester's reply, giving the information and from which the statements following are taken, was dated 8th November 1788. (See p. 958).

crease has hitherto been almost entirely confined, & will probably continue to be so, to the British & American Settlers.

The Canadians are represented as being very deficient in that spirit of enterprize & industry by which the other inhabitants of the province are distinguished.

## House of Assembly.

1st The first point prayed for in the Petitions is, a House of Assembly, which it is proposed should be triennial, & should be composed, of Old & New Subjects, in such manner as the King may think proper.

Besides the general & obvious topics which result from a comparison of the present form of Government in Canada, with the Constitution of Great Britain, & from a consideration of the probable increase of the province, & particularly, of the British inhabitants there, the principal arguments urged in favor of this measure, are the following,

1st The King's Promise as conveyed by his Proclamation of 1763, by which the benefits of the British Constitution are stated to have been offered to such of his Subjects as should settle in Canada.

2dly The natural wish which the Loyalists must be supposed to feel, for the enjoyment of a constitution similar to that under which they were bred, & for which they have sacrificed so much; altho' they do not appear as yet to have joined in any of the petitions which have hitherto been presented on this subject.

3dly The general Benefits which would result to the Colony, from a Legislature established on the principles of the British Constitution, & particularly, the indispensable necessity which now exists for constituting some form of Government competent to impose taxes for the internal purposes of the province, as this power is witheld, by the Quebec Act, from the Legislative Council, & as on this account, many important objects of internal improvement, must either be wholly obstructed or must fall, as a considerable, & increasing burthen, on Great Britain.

## Objections.

The objections of the Counter Petitioners fall under the following heads, viz:

First, an Allegation, that their distresses make them unable to bear the Taxes, which they consider as a consequence necessarily resulting from this Measure; Secondly, the Apprehension, that in the formation of an Assembly, a preponderance might be given to the Old Subjects, which, it is represented, would be unjust, considering how small a proportion they bear, in point of numbers, to the New Subjects; & would be injurious to the latter, by subjecting them to new regulations, passed by persons, ignorant of their customs, & existing laws.

Thirdly, The fear that this measure might lead to the introduction, of the whole body of British Laws, of the extent, & tendency of which, the Canadians are entirely ignorant.

That it might produce disquietude among the people, & that the low state of information & learning in the country, might expose them to the pursuit, by adoption of injurious, or distructive measures.

A difficulty is also stated, with respect to the inconvenience, & expence, of sending representatives from the distant Settlements, arising from the peculiar manner, in which the inhabitants of Canada are settled along the Banks of the River only, & going very little way back into the Country, in any part of it.

These are the Objections principally urged, but it is probable that the real Grounds of Uneasiness, which have most operated, arise from the apprehension, which the Seigneurs, entertain of losing the privileges, & distinctions of their Seigneuries, to which they are extremely attached, & of seeing their usages, & customs, particularly those which relate to Landed Property, overthrown by the preponderance of the old Subjects in the Assembly;

And from a fear on the part of the Canadians, in general, of being subjected to the payment of Taxes, from which they have hitherto been exempted.

In considering the first point, stated in favor of the request; it may be doubted, whether in point of fact, the form of Government to be established in the province, entered much, into the consideration of those British Subjects who actually settled there.

The second Point, which related to the alledged wish of the Loyalists upon this subject, appears to deserve great attention as far as they are concerned; for, if their case could be separated from the rest, no part of the objections before stated, would apply to them, any more than to the persons of a similar description, settled in the provinces of Nova Scotia, or New Brunswick, & it would only remain to be consider'd, whether there was (on general grounds of Policy) any reason for placing this colony on a different footing from the other dependencies of Great Britain.

It does not seem that any reliance can properly be placed on their present silence on these subjects as implying any indifference to them. The Apprehension of giving umbrage to Government under their present
& perhaps a strong sense of what they have so recently suffered from political dissentions, have probably operated to restrain them for the present. But every circumstance appears to indicate that their wish upon this subject will be to partake of the forms of the British Government. And indeed this desire may be pretty strongly collected from the great anxiety which they have expressed to hold their Lands not by Canadian but by British Tenures.[1]

[1] See Petition of Sir John Johnson and Loyalists, p. 773.

With respect to the 3d Consideration it is undoubtedly of great importance. A Government cannot be supposed to exist in any country for any considerable length of time which is defective in so essential a power as that of assessing, levying, & applying the contributions of individuals in order to execute those objects which are of general necessity, or advantage to the Community.

Whatever form of Constitution therefore is to be adopted for this province, it appears evident, that there must exist somewhere, a power competent to the exercise of these Functions. Such a power cannot any longer be stated to reside in the Parliament of Great Britain; altho' at the time of passing the Quebec bill this was clearly the mode of taxation to which it was intended to resort whenever occasion should require it. But, whatever difference of opinions may formerly have prevailed with respect to the right of the Mother Country to impose on the Colonies contributions for the purposes of general defence or of internal regulation & improvement, the exercise of any such right is now by an express & formal declaration on the part of Great Britain, abandoned for ever.[1]

It was indeed never understood with respect to the antient Colonies, that the right of the British Parliament could be so exercised as to supercede the interference of the provincial legislatures in imposing contributions for purposes which were wholly of a local & domestic nature, & it may be doubted whether the local peculiarities of Canada, and the circumstances of an increasing Colony, would not, even under the former system, have made it necessary, that, in order to provide for objects of internal Government, some power of Taxation should reside upon the spot.

It is however evident, that, in our present circumstances, the establishment of such a power is the only mode by which Great Britain can hope, to be delivered from the heavy expences which she now supports on account of that province, or from the expectation of new, and increasing burthens, in proportion as the population, & wealth of Canada may require a more extensive system, for the administration of Justice, & for the exercise of Government.

And this Consideration, will, perhaps, appear more worthy of attention, when it is stated, that the present expence incurred by Great Britain, on account of Canada, amounts to near £100,000 pr Ann: exclusive of the pay of the troops, kept up there.

If then the Power here spoken of, is to reside upon the spot, the first, & most important consideration, in any discussion of the affairs of Canada, must be, in whom such authority shall be vested.

On examining this Question, it will perhaps be found, that a power of this nature cannot, without the greatest difficulties, be supposed to reside, in any other man, or body of Men, than in a Legislature, formed nearly on the Model of the Constitution of Great Britain, & of the British Provinces.

[1] This was done in 18 Geo. III, Cap. 12. Statutes at Large, Vol. 32, p. 4.

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Such Authority can be conferred only by Parliament, and, even if it should be thought in itself a desireable measure, it would be difficult to prevail upon Parliament to vest this power in a body constituted upon different principles, from those, which are recognized, as the basis of our Constitution.

It may also be remarked, that, if it be true as appears, both from the general tenor of the papers, & from Lord Dorchester's opinion, that the fear of being subject to the payment of any taxes, has, of all objections, operated the most strongly, to render the Canadians disinclined to an Assembly, it must unquestionably, be true, that they would see, with much more reluctance, the same power vested, not in a body of persons, chosen by themselves, & likely to act under the same interest, with that of their electors, but in some other body, whatever it might be, over which they could have no controul & with whom they might have no common interest.

It does not seem that this point has ever been fairly stated to them;

The Option has appeared to them to be, not between one mode, & another, of creating a power competent to impose taxes, but between a Government, not possessing that power, & a Legislature, invested with it: but, if this misapprehension were removed, there does not appear any ground for believing, that a Legislature, wholly constituted by the Crown, or appointed in any other mode, would be more agreable to the Bulk of the Canadian inhabitants, than one, in part, composed of persons, elected by themselves.

The Case of the Noblesse may be different. It is possible that they may apprehend injury to their peculiar rights, from the establishment of a popular assembly, particularly, if that assembly were so constituted, as to give a considerable, & immediate preponderance to persons, whose education, habits, & mode of thinking, must render them adverse to the French Laws, & Customs; & many of whom may, besides, be supposed to be heated by the contests, which have, so long, subsisted in that province.

This, which is, in some degree, a just, & reasonable apprehension, is therefore entitled to attention.

But no sufficient objection will arise from hence, against the establishment of an Assembly, if it can be accompanied with such measures, as will guard against the danger of the preponderance apprehended.

And, on a consideration of the situation of the different parts of the province, there seems a natural mode of removing this objection, and of rendering, at the same time, the whole arrangement more satisfactory to the different classes of inhabitants in the Province.

Quebec is now divided, in fact, tho' not by law, into two districts; differing essentially in the Habits, Laws, & Manners of the Majority of the People, by whom they are inhabited:

Lower Canada, or that nearest to the Gulph of S. Laurence, is inhabited by the Descendants of the French, with the addition of some

British, in the Towns of Quebec, Montreal, & Trois Rivieres, & in the new Settlement in Gaspé.

The Upper Canada is almost entirely, settled by the Loyalists.

If these two bodies, & Classes of Men, differing in their prejudices, & perhaps, in their interests, were to be consolidated into one legislative body, dissentions, & animosities might too probably prevail; & the success of either party might, in fact, be injurious to the other. It should seem therefore, that the natural remedy, for this, would be, the separation of the province into two districts, having distinct Legislatures, in which, the separate interests of the old, & new Subjects might preponderate, according to the respective proportion of population, & of wealth.

If this were done, it would perhaps enable the Government of this country to gratify the wishes of all descriptions of persons in Canada, & to provide for the essential object of taxation above stated, by the establishment of a Council, and House of Assembly, in each of these districts; And if the several objections, which are detailed above, are examined with a view to a measure of this nature, it will perhaps be found, that so much of them as is really material to be attended to, would, by these means, be obviated.

The first of those objections, is one which applies as has before been stated not to an Assembly merely, but to any power possessing authority to impose Taxes.

And it is evident, that such an Objection cannot be allowed to operate, unless Great Britain were content to take permanently upon herself the whole present & future expence of the province.

The second, which respects the proportion of Old, & New Subjects, to be admitted into the Assembly, would be obviated by the division of the province as already proposed, into two districts, in one of which, the old, & in the other, the new Subjects would greatly preponderate.

The Third, which arises from the alarm, which the Canadians feel, at the introduction of an unknown body of new Laws, would be obviated by the same measure; while, it would, at the same time, be in the power of Parliament, in the first instance, & previous to the Commencement of the new Government, to provide for any change in the commercial code of the province, which may, on examination, be found to be really necessary, for the security, & protection of the British Merchant.

This part of the subject respecting the Commercial Laws, is however now under the consideration of His Majesty's Law Servants, &, it appears therefore, premature, to enter at present, more fully, into the consideration of it.

With respect to the fourth Objection, which relates to Apprehensions of disquietude, & of wrong measures, which may be pursued thro' ignorance, it is of too general a nature to admit of being much reasoned upon: It may however be observed,—That the Province is certainly very far from being now, in a composed or tranquil state.—

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That under the present management, the dissentions are likely, not only to continue but to increase; because, by the influx of British Settlers, & the rapid Progress of the British Commerce, the party, who are dissatisfied with the present form of Government, will continually be increasing their weight & influence, in the country at large, without acquiring, at the same time, a proportionate increase of weight & influence in the Government:—

That with respect to the Apprehensions of ill-judged, or ignorant measures, the giving to the people a share in the Government, has been found by experience, to be a measure calculated to diffuse among them, that Knowledge which they may now want;—And that, in the interval, the check of the Council, & of the Governor exercising the Royal Negative would be as effectual, in that form, as in the present, to prevent innovations injurious to the Community.

The difficulty arising from the expence of Representation, is of less moment.

It is one which is, to a degree, incident to all forms of free Government; and, it would be much lessened by the division of the Province;

With respect to the detail of such an Assembly, the number of persons who should compose it, & the proportions, in which the different bodies of Electors should be constituted; these are points, which still require much local information, before they could be satisfactorily arranged.

The proposal of the Board of Trade, in 1769,[1] & of M[r] Lymburner, in 1788,[2] may be thought to afford some lights on this subject;

But, if the Measure itself should be adopted, it may be adviseable to transmit to Lord Dorchester, an instruction to report his opinion as to the several points of detail necessary for carrying it into execution.

A Doubt has indeed been started whether the situation of the inhabitants of Canada, under the present landed tenures is such as renders them sufficiently independent of the Seigneurs, to make them capable of receiving a free Constitution.

Upon the best Enquiry which could be made upon this subject, it appears, that the Tenure under which the Canadian Farmers hold their Lands differs in fact from that of British Freeholders, only in a few inconsiderable points which do not seem of sufficient importance to obstruct the Measure of an Assembly, to be chosen by persons, holding under such tenures, supposing that the Measure should appear, in other respects, desireable.

## Council.

The second Point in the Petitions relates to the establishment of a Council, which, it is proposed, should consist of 30 Members, to serve without Salary, &, to be appointed during Life, or residence. To this,

[1] See Report of Lords of Trade, p. 384.
[2] See note 1, p. 955. The lengthy paper read by Mr. Lymburner before the bar of the House is given in full in Q. 62, A.-1. pp. 1-101.

no specific Objection is made, but the Counter-Petitioners remark, that, altho' the finding persons to serve without salary, might be desireable, it would be difficult, in the present State of the Province.

Altho' it is not expressly stated in the Petition, it appears probable that in the formation of such a Council, as is here proposed, the Petitioners had in view the Constitution of the other British Colonies, where, the Upper House of the Legislature, & the Executive Council form one & the same body.

But it may perhaps be said, with truth, on a view of the old Colonial Governments, that the constitution of the second branch of the Legislature was, of all others, the point in which they were the most defective.

If it was intended to assimilate those Governments in form or principle, to that of the Mother Country, it is sufficiently obvious, that the Aristocratical part of our Constitution was but ill supplied by a body, which, taken collectively, formed a part of the executive Government, & the individuals of which were liable to be removed from their Legislative Function, at the pleasure of the Crown, & acquired no permanent rank or distinction above the rest of the Community.

To the want of an intermediate Power, to operate as a check, both on the misconduct of Governors, & on the democratical Spirit, which prevailed in the Assemblies, the defection of the American Provinces, may perhaps, be more justly ascribed, than to any other general cause which can be assigned. And there seems to be no one point of more consequence, in this view, than the labouring to establish, in the remaining provinces, a respectable Aristocracy, as a support, & safe guard to the Monarchy, removed, as it is, at so great a distance, & on that account, so much less powerful, in its weight, & influence upon the people at large.

This Consideration must unquestionably lead, in the first place, to the giving, to the individuals who are to compose the Upper House, a more permanent tenure in that Station, than the Will of the Executive Government. Supposing that, on this idea, the Seats in the Legislative Council, or Upper House, should be given, as proposed, for life, or during residence, it follows, that the Executive Council, which is to participate in the Administration of Government must be a body constitutionally distinct from the Legislative Council, tho it may, in part, be composed of Members of either Branch of the Legislature. This is assumed, as a necessary consequence of what has before been stated;

First, because the principle of assimilating the Legislative Council more nearly to the Upper House in England, appears to require it.

Secondly, because it is evident, that the Station of an Executive Councillor cannot with propriety be conferred for Life.

Supposing then these Principles established, the Legislature would be composed of an House of Assembly as stated above, and of a Legislative Council, the Members of which would be appointed during Life, & would receive no Salary for the duties of that Station.

This Body would be distinct from the Executive Council, and it ought to be unlimited in point of number, in order to preserve to the Crown, the full exercise of its Prerogative, in that respect. If any mark of honour, or distinction, could, either be annexed to the Station itself, or given to the Persons called to it, even with descent to their families, (it being always understood that the station itself was not descendible) this circumstance would afford an additional source of respect, & consequence to them, & would thereby strengthen the principle which has already been explained— In a Legislature thus composed, the power of the Crown, as far as it would be exercised in the province, would, of course, be represented by the, Lieutenant Governors, or Governor General; but it might perhaps be an object well worthy of an attentive consideration, to enquire, whether any adequate means could be found, of rendering the Royal Negative more efficient both on the spot, in the hands of the King's Representative, & as exercised at home, by the King himself, with the advice of his Council.

This Object might perhaps in some degree, be attained, by a discrimination of the different objects of Legislation, so as to vest, in the Governor, the full Legislative power of the Crown, only in certain cases of urgent, & temporary emergency; while, in other cases, according to their respective nature, & importance, there might either be reserved to the King, a power of disallowing, as at present, or his express consent might be rendered necessary, in order to give, to the Acts of the Provincial Legislature, the full force, & validity of Law.

## Laws.

The third request stated in the petition, is, that the Criminal Laws of England should continue to be in force in the Province; and this is stated by the Counter-Petitioners to be entirely agreable to the wishes of all the inhabitants.

The fourth & fifth Articles propose, that the antient Laws, & Customs of Canada respecting Landed Estates, Marriage Settlements, Inheritance, & Dower, be continued; but subject to be altered by the Legislature of the Province; and that Owners may alienate by Will, as provided by the 10th Section of the Quebec Bill; and that the Commercial Laws of England should be declared to be the Laws of Canada, in all matters of Trade, & Commerce, subject to be changed by the Legislature of the Province, as in the preceeding Article.

The reply to these Requests, alledges, the danger and uncertainty of subjecting these points to Alteration by the Legislature, & thereby, rendering, as it is expressed, the rights which are here stated, as variable, as the Houses of Assembly, to whose decision they will be submitted.

These Articles include the two great points, which are in discussion, between the Landed, & Commercial Interests of the Province;

There may perhaps, be considerable difficulties in accommodating the System of the Canadian Laws of Landed Property, & the Commercial

Laws of England, so as to be blended together into one Mass, & to form the Code, by which, the Country shall be governed. In addition to this; it will probably be found, that in the detail of the English Law, respecting Commerce, there are many points, inapplicable to the local Situation of Canada, & to the present state of its population & wealth, as well as to the nature of its commercial dealings. Nor can it be thought desireable, by a sudden, & unprepared revolution, to introduce, at once, into a Country, a new Code, unknown to the bulk of the inhabitants, & perhaps, in great measure, even to those who desire it.

A Reference has been made on this Subject to the King's Law Servants, to consider the actual State of the Administration of Justice, which is represented to be uncertain, & contradictory; & the degree of alteration which may be necessary, for the security of the British Merchants, trading to Quebec, who have complained, with much earnestness, of their present situation.

But altho' these enquiries have appeared both necessary, & proper, in the present state of this business, it is obvious, that the most effectual, of all remedies that could be applied, would be the establishment of a temperate, & well disposed Legislature, on the Spot, who might have sufficient local information to introduce whatever changes were really necessary, by gradual, & well considered measures.

The proposal of a division of the province & of a distinct Legislature for each district, seems entirely to remove so much of the Objection above stated as arises from the fear which the Canadians have expressed of rendering the present Laws, relating to their Landed Property, liable to Alteration, &, thereby, more uncertain than at present.

This remedy may not be equally effectual, with regard to the commercial interest. The River S$^{t}$ Lawrence not being navigable for ships, beyond Montreal, all the European commerce of Canada, must be carried on, either to that City, or to Quebec, & must therefore be confined to Lower Canada. If therefore the power of regulating, without controul, the code of Commercial Laws, were entrusted to the Legislature of that district, in which, it has before been stated, that the Landed, or Canadian interest would probably preponderate, the prejudices, or even the ignorance of the Canadian Noblesse, or Farmers might operate, in this respect, to the real disadvantage of the British Commerce:

This inconvenience could only be obviated by the previous establishment of such commercial Laws, as, the security of the Merchants, may, in fact, be found to require. And, when these were once established, the interference of the Crown would be sufficient, by its negative, to prevent any alterations, injurious to the interests of Commerce.

This part of the Subject cannot however, be more particularly stated till the actual situation of the Province, in this respect, has been considered by those, who are best enabled to decide upon it.

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## Habeas Corpus.

The 6th Request is for the establishment of the Habeas Corpus Act, *as a part of the Constitution.* The Habeas Corpus Act is now in force, by an Ordinance of the Legislative Council; and under the proposed establishment of a new provincial Legislature, there appears to be an ample Security against its being repealed, or improperly suspended.

The Neighbourhood of Rival States, inhabited by a people speaking the same language, & having the same Manners, and Habits, with the King's Subjects, may however, in case of war, or intestine dissention, render a suspension of this Law more peculiarly necessary in Canada, than elsewhere.

## Juries.

The Seventh Article desires Optional Juries, in the particular form therein specified.

The Objection is stated, in the reply, to arise from the difficulty of finding a sufficient number of persons properly qualified to serve, without too great a burthen on Individuals.

This point seems, in part connected with the general question of the Code of Laws to be established in Canada; & to depend in part, on mere local information. No Opinion is therefore given upon it here, especially as it seems to be a fit subject for the consideration of a provincial Legislature.

## Sheriffs.

The 8th Article desires that Sheriffs may be elected annually by the Assembly, & approved, & commissioned by the Governor; it does not state whether the power of disapprobation is to reside in the Governor, nor, who is to decide, in case of a difference between the Governor & the Assembly on this subject; and the Reply takes notice of this omission.

It appears however, that the demand itself is inconsistent with the principles of the British Constitution, & as such, is wholly inadmissible.

The same Objection applies to the 9th & 10th Articles, which restrain the Governor from suspending any Officer of the Crown, or from creating new Offices without the Consent, & advice of the Council.

## Offices.

The 11th Article, which relates to the execution of Offices of Trust, by the Principal holding the Office, seems already sufficiently provided for by the Act of the British Parliament on that Subject.

## Judges.

The 12th Article relates to the Appointment of Judges to hold their offices during Good Behaviour, & to have ample Salaries.

The principle of this Request is unobjectionable, tho' it may be doubted, whether the present state of legal information, or of Judicial Character,

in the province, would justify the immediate adoption of the first part of the proposal. With respect to the second, the grant of Salaries must rest with the Legislature of the Province, as it is apprehended, that it will be impossible to propose any addition to the annual expence, which this Country already incurs, on this account.

### Appeal.

The 13th Articles desires a Court of Appeal from the Judicatures of the Province, to be composed of the Lord Chancellor, & the 12 Judges.

This Article appears to cast a reflection wholly unmerited on the decisions of the Privy Council; and the proposal is certainly incompatible with the other duties of the persons named.

### Existing Laws.

The Last Article relates to the repeal of the present, existing Laws.

This appears wholly unnecessary, & would be inconsistent with the means pointed out above, of securing to the commercial interest of Quebec the Laws necessary for their Protection. In the foregoing discussion, the several objects mentioned in the Petitions, have been separately detailed, with a reference to the different objections, stated to them by the Counter-Petitioners, & to their probable effect on the internal State of the province.

But in forming a decision on points of so much importance, & extent, it is undoubtedly material, that they should be examined, in a more enlarged, & general point of view, &, that it should be considered, by what means, the connection, & dependance of Canada, on this Country, may be so preserved, & cultivated, as to be render'd most beneficial to Great Britain, during its continuance, & most permanent in its duration.

In this view, a doubt may naturally suggest itself, both from an opinion, which seems to be pretty generally received, & from an observation of the late events in America, whether the degree of freedom, which, the measure now proposed would give to the Canadians, is not inconsistent with the existence of a dependant Government.

It may perhaps, be justly doubted, whether any form of Administration which could now be established, would prevent the separation of so great, & distant a dominion, after it should have arrived at a certain point of extension, & improvement.

But the real question now to be decided is, what system is best calculated to remove this event to a distant period & to render the connection, in the interval, advantageous to the Mother Country without oppression or injury to the Colony?

It is certainly very material to examine the constitution of our former Colonies with a view to this Question; in order that we may profit by our experience there, & avoid, if possible in the Government of Canada, those defects which hastened the independence of our antient possessions in

America. And the result of such an enquiry will perhaps shew, that the revolt of those provinces is not justly to be ascribed to a communication of the British Constitution, which, in fact they never enjoyed; but that, as their form of Government differed essentially from that of Great Britain, so the points in which that difference consisted, were those which operated most to produce their separation from the Mother Country, & which are avoided in the plan now suggested for the Constitution of Canada.

Such an examination does indeed assume a point which is liable to be much questioned, & which it would perhaps be very difficult to maintain by any grounds of general reasoning or speculation. The Establishment of a separate & local Legislature in a distant province, under any form or model which can be adopted for the purpose, leads so evidently to habitual Notions of a distinct interest, & to the existence of a virtual independence as to many of the most important points of Government, that it seems naturally to prepare the way for an entire separation, whenever other circumstances shall bring it forward. If therefore the subject were entirely new, & if the preservation of the dependance of a colony on its Mother Country were the only object to be considered, it should seem that this would best be attained by reserving at home the whole right & exercise of the power of Legislation; and that this System, tho certainly less adapted to promote the prosperity of the province would probably be effectual to maintain for a very considerable time, the union of the Empire.

But it has happened, either from accident or necessity, that a different principle has been adopted, in the formation of all the British Colonies, & even in the constitution which has already been given to Canada. We have established there, tho' in a different manner, from what was done in the other Colonies, a distant local Legislature, competent to all the powers of Government, except Taxation. And this last power, which, by the Quebec Bill, we had reserved to the British Parliament, we have since been compelled by our own formal declaration in 17[1] & perhaps still more by the circumstances of the present times, to relinquish & abandon.

Taking it then for granted that some Legislature must exist in Canada, for the exercise of those functions which are now vested in the Legislative Council, and for the purpose of Taxation, the necessity of which has before been stated, it remains to compare the plan which is now proposed for Canada, with the Constitution of the antient Colonies.

It will appear, on such examination, that in the formation of those Governments, while full Scope & Vigour were given to the principles of Democracy by the establishment of a popular representation, in their houses of Assembly, no care was taken to preserve a due mixture of the Monarchical, & Aristocratical parts of the British Constitution.

The defects in the formation of the second branch of those Legislatures, or of the Council, as it was called, have already been mentioned, in the discussion of one of the points of the petitions.

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[1] 1778; see note 3, p. 1000.

Those in the constitution, & administration of the executive Government, were scarcely less glaring, & had, unquestionably, a powerful operation, in producing the defection of the Colonies. The situation of those Counties, removed them from the seat and residence of the Royal Authority. Whatever effect arises, here, from the immediate presence of the Sovereign, or from the influence of His Court, was therefore, necessarily lost, at so great a distance from the Mother-Country.

The nature of the Situation allotted to the Governors in America, the limited extent of their Authority, the dependance, in which they frequently found themselves, on the Colonies even for their own Support, & Maintenance, the little consequence annexed to their Station, &, sometimes, the character, & rank of the persons sent there, were but ill adapted to remedy the defect arising from the absence of the Sovereign.

In addition to these considerations, the power of conferring honours, and emoluments, enables the Sovereign, in this country, to animate the exertions of individuals, & to secure their attachment to the existing form of Government, by all the fair objects, of just, & honourable ambition.

The case was widely different in the Colonies. The rewards of the Crown were few; they were such, as conferred little distinction; & they were, perhaps sometimes bestowed, with a very small degree of attention to the principle, which has here been stated.

If these defects could, at all, be remedied by an attention to those causes, in which they have originated, there might be just reason to hope, that the consequences would be different.

With respect to the first point, much has already been done.

The consolidating the different Governments, in the remaining Colonies, under one person, must operate to give weight, & dignity, to the representation of the executive authority.

The Union of the Supreme Civil & Military Power, in the same hands, is a measure of a similar tendency, and effect; and it appears reasonable to hope, that the footing, on which that situation is now placed, in point of consideration, & emolument, will give as much security, as the nature of the thing itself will allow, for its continuing to be filled, in a proper, & adequate manner, & that it is already rendered so far independent of the different Colonies, over whom the Governor General presides, that no diminution of dignity, or weight to the executive authority will arise on this account.

The second point, which relates to the distribution of the favours, & rewards of the Crown, is attended with greater difficulty, on account of the limited extent of these objects, in the Government of a Colony, which is yet in its infancy.

Something of this sort will however, arise, from the measure which has before been mentioned, with a different view, of conferring on the persons, who may be called to the Upper House of the Legislature, some personal, or hereditary distinction of Honour & Nobility.

The establishment of a Military force, within the province, in the nature of a Militia, is a measure, which has already been adopted on the recommendation of Lord Dorchester; & the ideas stated by him on the subject, have the object of rendering the Commissions, in this establishment, the means of preventing the Canadian Noblesse, from serving in the French Army, as is now, too frequently the case.

Other Objects of this nature will, by degrees, arise, as the consequence of the Colony itself increases, & as the detail of its Government becomes gradually more enlarged; and the Act which has been passed in the British Parliament, for enforcing the residence of persons, appointed to Provincial Offices, has an evident tendency to produce, in no inconsiderable degree, the object here desired, of having constantly, within the provinces, a certain number of persons, attached by these means, to the existing form of Government, & to the connection with the Mother Country.

There is another point of obvious, & striking difference, between the Constitution of the former Colonies, & that of this Kingdom, and it is, in some degree, connected with this part of the subject.

In Great Britain, & in Ireland, altho' it is necessary, annually to have recourse to Parliament, for the support, & maintenance of the military force, yet, for the purposes of his Civil Government, the King possesses a large, hereditary Revenue; and this, altho' it is here given up, by a temporary exchange for the Civil List, is considered as a subsisting fund, and revives, at every demise of the Crown, so as to be applicable to the Expences of the Civil Government.

In America, nothing of this sort has been established; The expences of Government, there, have, either been borne by this Country, or they have been defrayed by Taxes, imposed by the Provincial Legislatures.

In either case, they would naturally, be inadequately provided for. The Government of this Country could not but feel a just reluctance to add to the burthens of the people of Great Britain, on account of objects, so remote to their interests, or feelings; while, on the other hand, the Colonists would naturally be very slow, in imposing taxes, on their own Agriculture, Commerce or Consumption, for the purpose of maintaining establishments in which they were hardly allowed to share, or of adding to the number of Civil Officers, absent from the duties of their Stations.

The Effect was not confined to the mere want of Patronage, or rewards for services; it had a general tendency to diminish the weight, & consequence of Government itself, when the duties, which all Government owes to those who are governed, were either not performed at all, from the want of proper office[r]s for the purpose, or were performed by persons, whose situation in life did not entitle them to the respect, or confidence of their Fellow-Citizens.

It is certainly difficult, to propose a remedy for this evil, which may however, perhaps appear, not so much one, actually existing in Canada,

as one, which may probably arise, if the expected increase of wealth, & population there, should not bring with it, an increase of resources, for the maintenance of a more extensive System of Government.

No additional expence to Great Britain, on this account, can, or ought to be proposed: and the difficulties, which prevented the levying a sufficient revenue, for the purposes of Government, in the American Atlantic provinces, are likely to operate, with quite as much force, in that of Canada.

There is certainly great reason to regret, that this object has hitherto been overlooked, in the first establishment of all our Colonies: because, at that period, it would have been easy to have secured this point, by measures, similar to those which are said to have been adopted by Penn, in the original Settlement of Pennsylvania; who, by reserving to himself, & to his heirs, a certain portion of Land, situated in the middle of every Grant made to individuals, secured a property, which could not but increase, in value, in proportion to the increase, of the Colony itself.

This gradual & proportionate rise in the value of such reservations, without any expence to be bestowed upon them, renders this mode peculiarly adapted to the object which has been spoken of, above; because, it would thus evidently afford a resource increasing with the occasion of the demand which it is calculated to answer. Perhaps it is not too late, even now, for the adoption of such a system; There are, even in Lower Canada, large tracts, still ungranted, which, any increase in the population of the province, must render valuable from their situation, without requiring any expence of clearing, or cultivation to be bestowed upon them by the Crown; and, in Upper Canada, the Cultivation may be said to be still in its infancy, even on the banks of the Waters along which it spreads. The inner Countries have not been attempted to be settled, in either district of the province; and this measure of a reservation to be made in all future Grants, is recommended by Lord Dorchester, in one of his Letters, tho' as it appears, rather with a view of retaining the power of rewarding individuals, than with that of securing a revenue to the Crown, for the purposes of the Provincial Government.

These are the several ideas which have occurred, on a consideration of this subject, as holding out the best grounds of establishing, in Canada, a form of Government well adapted to promote the prosperity of that province, & free from the errors which have prevail'd in the Constitution of the antient Colonies.

And, if they can, in any sufficient degree, be carried into Effect, it may perhaps be thought that they would afford a juster, & more effectual security against the growth of a republican or independent spirit, than any which could be derived from a Government more arbitrary in its form or principles.

But even if the advantages which appear to result from these measures were visionary & chimerical & if it were agreed, that the danger of separa-

tion would be increased by giving to Canada a Constitution, assimilated, as is here proposed, to that of Great Britain, it may still be asked, whether this Plan is not become a point of almost inevitable necessity.

The neighbourhood of the American States, & even of the remaining British Colonies seems to make it impossible that the people of Canada should acquiesce, for any considerable length of time, in the continuance of a system at all resembling that under which they are now governed.

The discontents which have already arisen there on this subject, have now brought the question forward to the public View; If, in the discussions which will arise upon it, in the next Session of Parliament, the present form of Government in Canada is to be supported, it can be done only by speaking out, & avowing fairly, that the Object is, to retain the dependence of the province, by establishing, in it, a Constitution less free, than that which existed in the antient Colonies, or than that, which has been established, in those provinces, which still remain to Great Britain.

And, considering the general temper of the present moment, it may well be doubted, whether it would be possible, to maintain with success, (supposing even, that it were desireable to do so,) either that these means are well calculated for attaining the object in question, or, that the object itself ought to be aimed at, by denying, to so large a body of British Subjects, the benefits of the British Constitution; particularly, in those points which are considered so essential as those which are here in question.

Endorsed:—View of Petitions &c

## GRENVILLE TO DORCHESTER.[1]

(N° 2.) WHITEHALL 20th Oct$^{r}$ 1789.

R$^{t}$ Hon$^{ble}$ Lord Dorchester
Quebec.

My Lord,

It having been determined to bring under the consideration of Parliament early in the next Session the propriety of making farther provision for the good government of the Province of Quebec, I enclose to your Lordship the draught of a Bill prepared for this purpose.[2]

His Majesty's Servants are desirous, before this Plan shall be proposed to Parliament, to avail themselves of such observations upon it as your Lordship's experience and local knowledge may suggest. It is probable that Parliament may not meet till towards the end of January next, and that there will therefore be full time for me to receive your Lordship's answer to this dispatch with such remarks as may occur to you on the

[1] Canadian Archives, Q 42, p. 96. This is the public despatch referred to in the previous letter. See p. 969.

[2] See below, p. 992.

proposed Bill, and with such information as may be necessary to enable me to supply those particulars of detail which are now left in blank.

Your Lordship will observe that the general object of this plan is to assimilate the Constitution of that Province to that of Great Britain, as nearly as the difference arising from the manners of the People and from the present situation of the Province will admit.

In doing this a considerable degree of attention is due to the prejudices and habits of the French Inhabitants who compose so large a proportion of the community, and every degree of caution should be used to continue to them the enjoyment of those civil and religious Rights which were secured to them by the Capitulation of the Province, or have since been granted by the liberal and enlightened spirit of the British Government.

This consideration has had a great degree of weight in the adoption of the plan of dividing the Province of Quebec into two Districts which are to remain as at present under the administration of a Governor General, but are each to have a Lieut. Governor and a separate Legislature.

The King's Servants have not overlooked the reasons urged by your Lordship against such a separation,[1] and they feel that while Canada remained under its present form of Government great weight would have been due to those suggestions ; but when the resolution was taken of establishing a Provincial Legislature, to be constituted in the manner now proposed, and to be chosen in part by the People every consideration of policy seemed to render it desirable that the great preponderance possessed in the Upper Districts by the King's antient Subjects, and in the lower by the French Canadians should have their effect and operation in separate Legislatures ; rather than that these two bodies of People should be blended together in the first formation of the new Constitution, and before sufficient time has been allowed for the removal of antient prejudices, by the habit of obedience to the same Government, and by the sense of a common interest.

With respect to the intended Boundaries of these Provinces a blank is left in the Bill in order that your Lordship may, with the assistance of the Surveyor General, who is now in Quebec, consider of such a description of those Boundaries as may be sufficiently intelligible and certain, so as to leave no room for future difficulties on that subject. The division between the two Provinces is meant to be the same as is mentioned to your Lordship in Lord Sydney's Letter of the 3d Sept$^{r}$ 1778, with the alteration suggested by your Lordship in your Letter of the 8$^{th}$ November following.[2]

There will however be a considerable difficulty in the mode of describing the Boundary between the District of Upper Canada and the Territories of the United States, As the adhering to the Line mentioned in the Treaty with America would exclude the Posts which are still in His Majesty's Possession, and which the infraction of the Treaty on the part of America

[1] See Dorchester to Sydney, November 8th, 1788, p. 958.
[2] See pp. 957 and 960.

has induced His Majesty to retain, while on the other hand, the including them by express words within the Limits to be established for the Province by an Act of the British Parliament would probably excite a considerable degree of resentment among the Inhabitants of the United States, and might perhaps provoke them to measures detrimental to Our Commercial Interests. Possibly the best solution for this difficulty might be to describe the Upper District by some general words such as "All the Territories &c. &c. &c. possessed by and subject to His Majesty, and being to the West or South West of the Boundary Line of Lower Canada, except such as are included within the present Boundaries of the Government of New Brunswick.

In settling this point of the Boundaries it will also be a question, whether the Fishing Settlement in Gaspé may not with advantage be annexed to the Government of New Brunswick rather than to be left as a part of that of Lower Canada under the system now proposed to be established particularly as the local Circumstances of that District might render a representation of it in an Assembly at Quebec extremely difficult if not impracticable.

The Legislature in each of the Two Provinces is intended, as your Lordship will observe from the draught of the Bill, to consist of His Majesty represented by His Governor, or Lieutenant Governor, a Legislative Council, and a House of Assembly.

It is intended to separate the Legislative from the Executive Council, and to give to the Members of the former a right to hold their Seats during their Life and good Behaviour, provided they do not reside out of the Province, or attach themselves to any Oath of allegiance or Obedience to the United States, or to any other Foreign Power.

It is the King's farther intention to confer upon the Persons whom he shall distinguish by calling them to His Legislative Council some mark of Honour, such as a Provincial Baronetage either personal to themselves, or descendible to their Eldest Sons, in lineal Succession.

A great accession of wealth to the Provinces might probably induce His Majesty at a future period to raise the most considerable of these Persons to a higher degree of Honour, but this could certainly not be done with propriety under the present Circumstances.

The Object of these regulations is both to give to the Upper branch of the Legislature a greater degree of weight and consequence than was possessed by the Councils in the old Colonial Governments, and to establish in the Provinces a Body of Men having that motive of attachment to the existing form of Government, which arises from the possession of personal or hereditary distinction.

It will be very necessary that great attention should be paid to the choice of those Persons who are to be placed in this situation in the first instance, and of those whom His Majesty may be advised from time to time to add to that number ; and as your Lordship's long knowledge of the Province and of the Individuals who compose the higher classes of the

Community, must render your Lordship more particularly competent to such a Selection, I must desire that your Lordship will consider this point with that degree of attention to which its importance entitles it, and that you will state to me the names of those Persons whom you may think fit objects of the King's favor in this respect, in each of the Two provinces intended to be formed.

In the draft of the Bill which I enclose, a blank is left for that which is to be fixed as the smallest number of which the Councils are respectively to be composed. It is certainly desireable that this number should not be made too large in the first instance, as it would be easy for His Majesty to add to it whenever it may be found expedient, while on the other hand the calling improper Persons to the Council, in order to make up the number required by the Bill would under the system now proposed be productive of permanent inconvenience and mischief to His Majesty's Government.

Of this point also your Lordship must unquestionably be the best Judge, and I shall be anxious to learn your Sentiments upon it. My present idea, founded, however, rather in conjecture than on any satisfactory information, would be that the Legislative Council in Upper Canada should not consist of less than six Members, and in lower Canada of not less than Twelve ; and that the selection of these Persons should be made with a view to encreasing the number by some addition at no very distant period, as a mark of His Majesty's favor to those Persons whose Conduct may be found to entitle them to it.

Your Lordship will also state to me for His Majesty's information, the number and names of those Persons whom you may think proper to recommend to His Majesty for Seats in the Executive Council.

It is by no means intended that the Members of the Legislative Council should be excluded from this Body, or that it should on the other hand be wholly composed of Persons of this discription. It may be adviseable that some of the Persons named to the Executive Council in one of the Districts, should also be admitted to the same distinction in the other.

In providing for the establishment of a House of Assembly in each of the Two Provinces, the first question of detail which occurs is that of the Numbers of which these Bodies should consist, and of the manner in which they should be elected ; particularly with respect to the division of the Provinces into Counties or Districts, and to the relative proportion of Representation to be allowed to the Towns.

The decision of these points must necessarily depend on local knowledge: They are therefore left in blank in the Draft of the Bill, and I must desire your Lordship's opinion upon them. I am not sufficiently informed whether the present Division of the Counties would be well adapted to the Object in question, or whether a subdivision into Parishes or Districts would be more desireable.

SESSIONAL PAPER No. 18

I enclose for your Lordship's information a Paper delivered to me by Mr Lymburner, containing a Plan of Representation for the Province ;[1] but as far as I am at all enabled to form an Opinion on the Subject, that plan appears to me to be liable to great objection. I also transmit a plan for the same purpose framed by the Board of Trade in 1765.[2]

The next point to be considered is the Qualifications of the Electors, and of the Persons to be elected in each of the Provinces. This is also in great measure a point of local detail, depending on the condition & circumstances of the different Classes of the Inhabitants of the Provinces; and on which His Majesty's Servants are therefore desirous of receiving your Lordship's Opinion. In the margin of the Bill which I now transmit, I have marked the suggestions which have been made to me on this Subject ; but I do not feel myself enabled, without farther information, to form any satisfactory Opinion upon them.

The remaining Clauses of the Bill do not seem to require much particular discussion in this Letter ; Your Lordship will observe by the 27th Clause, that it is intended to continue all the existing Laws of the Province untill they shall be repealed or varied, by the Legislatures of the respective Provinces. An exception is however made and there is a Clause left in blank for the insertion of such Commercial Regulations, if any, which it may be thought expedient to introduce, as exceptions to the Canadian Laws, respecting Property and Civil Rights, previous to investing the Assembly in Lower Canada with a right to negative all future changes which may be proposed.

This is a point which is now under the consideration of His Majesty's Law Servants, but as it is probable that I shall receive your Lordship's answer to this dispatch before it may be necessary to come to a final decision on this Subject, I shall be glad to be furnished with any suggestions which may occur to your Lordship upon it, as likely to conduce to the advancement and security of the Commercial Interests of this Kingdom, and that of the Province as connected with it.

The Clause enabling Persons to commute the holding of their Lands into free and common Soccage is conformable to what your Lordship has recommended with respect to the Upper Districts,[3] and it seems a measure of good policy to extend the same principle to the lower parts of the Province, as far as the prejudices of the French Inhabitants will allow.

I should wish to know your Lordship's sentiments with respect to the time which might be most convenient for the commencement of this new System, supposing the Bill to be passed in the next Session of Parliament.

I am &ca

W W. GRENVILLE

[1] This plan for a House of Assembly, which was drawn up in 1784, is reproduced along with the other documents of that date. See p. 753; also the notes on the same page.

[2] This date should be 1769, the correct date being given in the enclosure mentioned. See Q 42, p. 131. This is part of the Report of the Lords Commissioners for Trade and Plantations relative to the state of the Province of Quebec, dated July 20th, 1769. It is given in full at p. 377. The portion here referred to will be found at p. 384.

[3] See Dorchester to Sydney, June 13th, 1787. p. 946, and also note 1, p. 947.

# FIRST DRAUGHT OF CONSTITUTIONAL BILL.[1]

## Preamble.

Whereas an Act was passed in the 14th Year of the Reign of His present Majesty, intitled, "An Act for making more effectual Provision for the Government of the Province of Quebec, in North America ;[2]

And whereas the said Act is in many respects inapplicable to the present condition & circumstances of the said Province, and Whereas it is expedient & necessary that further provision should now be made for the good Government, & prosperity thereof ;

1. May it therefore please Your Most Excellent Majesty that it may be Enacted, & be it Enacted by the King's Most Excellent Majesty, by, & with the advice & consent of the Lords Spiritual & Temporal, & Commons in this present Parliament assembled, and by the Authority of the same ; That so much of the said Act as in any Manner relates to the establishment of the Boundaries of the Province of Quebec, or to the Appointment of a Council for the affairs of the said Province, or to the Power given by the said Act to the said Council, or to the Major part of them to make Ordinances for the peace, welfare, & good Government of the said Province, with the consent of His Majesty's Governor, Lt Governor, or Commander in Chief for the time being, shall be, & the same is hereby repealed.

2. And be it Enacted by the Authority aforesaid, That the several Territories, Lands, & Countries which are now subject to, & possessed by His Majesty in North America, & which are comprized within the limits of the said Province of Quebec, as formerly established by the said Act,[3] shall be, & the same are hereby divided into two Provinces, which Provinces shall be called, The Province of Upper Canada, & the Province of Lower Canada ; And be it Enacted, That the Boundaries of the Province of Upper Canada shall be as follows, that is to say,[4]

And be it Enacted, That the Boundaries of the Province of Lower Canada shall be as follows, that is to say,[4]

3. And be it further Enacted, by the Authority aforesaid, That there shall be, within each of the said Provinces respectively,

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[1] Canadian Archives, Q 42, p. 105. This draught of the Constitutional Bill accompanied the foregoing despatch, as the first enclosure.

[2] The Quebec Act. See p. 570.

[3] The vagueness of this description of the boundaries of Canada was due to the fact that Britain still retained the posts and adjoining territory to the south and west of the boundary line as given in the Treaty of 1783. As Grenville indicates in his despatch, the British Government felt a difficulty in either including or excluding these posts, hence the diplomatic description here given. The matter is again taken up in the documents which follow.

[4] These are left for Dorchester to fill in.

a Legislative Council, & a House of Assembly, to be severally composed, & constituted, in the manner herein after described :

And That in each of the said Provinces respectively, His Majesty His Heirs, & Successors, shall have power, by & with the advice, & consent of the Legislative Council, & House of Assembly of such Provinces respectively, to make Laws, for the Peace, Welfare, & Good Government thereof ;

And That such Laws being passed by the Legislative Council, & House of Assembly of either of the said Provinces respectively, & being assented to by His Majesty, His Heirs, or Successors, or being assented to in His Majesty's name, by such person as His Majesty shall from time to time appoint to be His Gov$^{r}$ or L$^{t}$ Gov$^{r}$ of such Province; or as His Majesty shall from time to time appoint to administer His Government within the same, in the absence of such Governor, or L$^{t}$ Gov$^{r}$ shall be valid & binding on the Inhabitants of the Province in which the same shall have been so passed.

Q$^{re}$ Governor General? (in original.)

4. And be it further Enacted, by the Authority aforesaid, That, for the purpose of constituting such Legislative Council as aforesaid, in each of the said Provinces respectively, it shall, & may be lawful for His Majesty, His Heirs, & Successors, by, & with the advice of His Privy Council, to authorize, & direct His Gov$^{r}$ or L$^{t}$ Gov$^{r}$ or person administring His Government, in each of the said Provinces respectively, within (3) months after the commencement of this Act, in His Majesty's name, & by an Instrument under the Great Seal of the Province, to summon to the Legislative Council, to be established in each of the said Provinces respectively, a sufficient number of discreet, & proper persons, being not fewer than (6) to the Legislative Council for the Province of Upper Canada, & not fewer than (12) to the Legislative Council, for the Province of Lower Canada ;

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Q.

And that the persons so summoned shall thereby become members of the Legislative Councils to which they shall respectively, have been so summoned, and shall constitute & compose the same respectively ;

And That it shall also be lawful for His Majesty, His Heirs & Successors, from time to time, by & with the advice of the Privy Council, to authorize & direct His Governor, or L$^{t}$ Gov$^{r}$ or person administring His Government in each of the said Provinces respectively, to summon to the said Legislative Councils of the said Provinces respectively, in like manner, such other person, or persons, as His Majesty, His Heirs, & Successors shall think fit ;

And that every person who shall be so summoned to the Legislative Council of either of the said Provinces respectively,

shall thereby become a member of such Legislative Council to which he shall have been so summoned.

5. Provided always, & be it Enacted by the Authority aforesaid, That no person shall be summoned to the said Legislative Council, in either of the said Provinces, who shall not be of the full age of twenty one years, & who shall not be a natural born subject of His Majesty, or an Inhabitant of one of the said Provinces, having been born within one of the said Provinces, previous to the Conquest thereof by His Majesty's Arms.

Q.

6. And be it further Enacted, That every Member of each of the said Legislative Councils shall hold his Seat therein for the Term of his Life, but subject nevertheless to the Provisions herein after contained for vacating the same, in certain cases herein after specified.

7. Provided always, & be it Enacted by the Authority aforesaid ; That if any Member of either of the said Legislative Councils shall leave the Province for which he was appointed a Councillor, & shall reside out of the same, for the space of one year continually, without the permission of the Governor, or L$^{t}$ Governor of the Province, or of the person administring His Majesty's Government there, such permission to be signified to such Legislative Council by such Gov$^{r}$ or L$^{t}$ Gov$^{r}$ or Person administring His Majesty's Government ; Or if he should reside out of such Province for the space of two Years continually, without the permission of His Majesty, His Heirs, or Successors, signified to such Legislative Council, by the Governor, or L$^{t}$ Governor, of the Province, or Persons administring His Majesty's Government there ;

Or if any such Member shall take any Oath of Allegiance or obedience to any foreign Prince or State, his Seat in such Council shall thereby become vacant.

8. Provided also, & be it Enacted by the Authority aforesaid, That if any Member of either of the said Legislative Councils shall be attainted for Treason, or Felony, his Seat in such Council shall thereby become vacant.

9. And be it further Enacted, That the Governor, or L$^{t}$ Gov$^{r}$ of the said Provinces respectively, or the Person, or Persons administring His Majesty's Government therein respectively, shall have power, & authority from time to time, by an Instrument under the Great Seal of the Province, to constitute, appoint, & remove the Speakers of the Legislative Councils of such Provinces respectively.

10. And be it further Enacted by the Authority aforesaid, That, for the purpose of constituting such Assembly as aforesaid, in each of the said Provinces respectively,

It shall, & may be lawful for His Majesty, His Heirs, & Successors, to authorize & direct His Governor, or L$^{t}$ Gov$^{r}$ or person administring His Government in each of the said
Q. Provinces respectively, within (3) months after the commencement of this Act, in His Majesty's name, & by an instrument under the Great Seal of such Province respectively, to summon, & call together an Assembly in & for such Province.—

11. And be it further Enacted, by the Authority aforesaid, That, for the purpose of electing the Members of such Assemblies, respectively, it shall, & may be lawful for His Majesty to authorize His Governor, or L$^{t}$ Gov$^{r}$ of each of the said Provinces, or the person or persons administring His Government therein respectively, to issue a Proclamation dividing such Province into Districts, or Counties, & appointing the limits thereof, so that the said Province of Upper Canada shall be divided into
*Blank in M.S. * districts, and the said Province of Lower Canada into
*ditto * districts.

And, That it shall also be lawful for His Majesty to authorize such Governor, or L$^{t}$ Gov$^{r}$, or person as aforesaid, to nominate
Q. Returning Officer? & appoint proper persons to execute the office of *Sheriff*, in each of the said Districts or Counties respectively.

12. Provided always, that no person shall be obliged to execute the said Office of *Sheriff* for any longer term than one year, or oftener than once, unless it shall be otherwise provided by the Legislature of the Province—

13. And be it further Enacted, That Writs for the Election of Members to serve in the said Assemblies respectively, shall be issued by the Governor, or L$^{t}$ Governor, or person or persons administring His Majesty's Government within the said Provinces respectively, within (14) days after the sealing of such instrument as aforesaid, & shall be directed to the respective *Sheriffs*
Q. Returning Officers? of the said Districts, or Counties ; And that the form of such Writs shall be, as nearly as may be, conformable to that of the Writs issued in Great Britain for the election of members to serve in Parliament ; And that such Sheriffs shall, & they are hereby authorized, & required duly to execute such Writs, & all other Writs which shall issue in pursuance of this Act, & shall be directed to them ;

And That Writs shall in like manner, & form be issued for the election of members in the case of any vacancy which shall happen by the death of the person chosen, or by his being summoned to the Legislative Council, of either Province ; in which case, it is hereby enacted, That the person so summoned shall no longer continue a Member of the said Houses of Assembly, or either of them ;

And be it also Enacted, that in the case of any Vacancy, by the death of the person chosen, or by reason of his being so summoned as aforesaid, the Writ for the Election of a new Member in the room of the person, so dead, or so summoned, shall be issued within * days after his death, or the date of such summons.

*Blank in M.S.

14. And be it further Enacted by the Authority aforesaid, That the whole number of members to be chosen in the Province of Upper Canada, shall be, * that is to say * members for each of the said Districts or Counties & * members for the Towns of *

*Blank in MS.

*ditto

15. And be it further Enacted, by the Authority aforesaid, That the whole number of members to be chosen in the Province of Lower Canada, shall be * that is to say * members for each of the said Districts or Counties, & * members for the Towns of *

*ditto

*ditto

16. And be it further Enacted, That no person shall be capable of voting at any Election of a Member to serve in such Assembly, in either of the said Provinces, or of being elected at any such Election, unless he shall then be of the full age of twenty one ; and unless he shall be a natural born subject of His Majesty, or an Inhabitant of one of the said Provinces, born within one of the said Provinces, previous to the conquest thereof by His Majesty's arms.

17. And be it further Enacted, That the Members for the several districts or Counties of Upper Canada shall be chosen by the Majority of Votes of such persons qualified to vote as aforesaid, as shall severally be possessed of *

*Blank in M.S. Q. (A Freehold Estate of the Yearly Value of Five Pounds?) Qre 40s

for their own use & benefit, & over & above all Rents & charges payable out of, or in respect of the same, within the said Province ;

And That the Members for the several Towns within the said Province, shall be chosen by the Majority of Votes of such persons qualified to vote as aforesaid, as shall severally be possessed of any House within the said Towns, or as, having been resident within the same, for the space of—months, previous to the Election shall severally be possessed of *

*Blank in MS. Q. (The value of One Hundred Pounds?)

in personal property within the same.

SESSIONAL PAPER No. 18

18. And be it further Enacted by the Authority aforesaid, That the Members for the several Districts or Counties of Lower Canada, shall be chosen by the Majority of Votes of such persons qualified to vote as aforesaid, as shall severally be possessed of *

*Blank in M.S. Q. (Lands or Tenements being held in Freehold, or in Fief, or in Roture, & being of the Yearly Value of £5 ?)

for their own use, & benefit, & over & above all Rents & Charges, payable out of or in respect of the same, within the said Province ;

And That the Members for the several Towns within the said Province, shall be chosen by the Majority of Votes of such persons as shall severally be possessed of any house within the said Towns, or as, having been resident within the same, for the space of * months previous to the Election, shall severally be possessed of *

*Blank in *ditto Q. (The Value of One hundred Pounds ?)

in personal property within the same.

19. And be it further Enacted, by the Authority aforesaid, That every Voter before he is admitted to give his Vote at any such Election, shall, *if required by any of the Candidates, or by the Returning Officer*, take the following Oath, which shall be administred in the English, or French Language, as the case may require—

Qre

I A.B. do declare & testify in the presence of Almighty God, that I am, to the best of my knowledge, & belief, of the full age of twenty one years, (& a natural born subject of His Majesty King George,) or, (& That I was born within His Majesty's Provinces of Upper or Lower Canada, previous to the Conquest thereof, by His Majesty's Arms.) And That I have not been polled before at this Election.

20. And be it further Enacted, by the Authority aforesaid, That it shall & may be lawful for His Majesty, His Heirs, & Successors, to authorize His Governor, or Lt Governor of each of the said Provinces respectively, to fix the time & place of holding such Elections, & to nominate proper persons to preside at the Elections for the Towns, & to make returns of the same, subject nevertheless to such provisions as may hereafter be made in these respects by the Legislature of the Province.

21. And be it further Enacted, by the Authority aforesaid, That it shall & may be lawful for His Majesty, His Heirs, & Successors, to authorize His Governor, or Lt Governor, of each of the said Provinces respectively, or the person, or persons administring His Government therein respectively, to fix the places & times of holding the first, & every other Session of the Legislative Council, & Assembly, of each of the said Provinces respectively, & to prorogue the same respectively from time to time, & to dissolve the same respectively by Proclamation or Proclamations, or otherwise, whenever he shall judge it necessary.

22. Provided always, & be it Enacted by the Authority aforesaid ; That the said Legislative Council & Assembly, in each of the said Provinces, shall be called together once at the least in every twelve months.

Q. And That every Assembly shall continue for (7) years from the day of the Return of the Writs for chusing the same, & no longer, subject nevertheless to be sooner dissolved by the Governor, or Lt Govr of the Province, or person administring His Majesty's Government there.

23. And be it further Enacted, by the Authority aforesaid, That all Questions which shall arise in the said Legislative Councils, or Assemblies respectively, shall be decided by the Majority of Voices ;

And That, in cases where the Voices shall be equal, the Speaker of such Council or Assembly, as the case shall be, shall have a casting voice.

24. Provided always, & be it Enacted by the Authority aforesaid, That no Member either of the Legislative Council, or Assembly, in either of the said Provinces, shall be permitted to sit or to vote therein, until he shall have taken & subscribed the following Oath, either before the Govr or Lt Govr of such Province, or person administring His Majesty's Government there, or before some person, or persons authorized by the said Govr or Lt Govr or other person as aforesaid, to administer the same ;

And That the same shall be administred in the English or French Languages, as the case shall require ;

I A.B. do sincerely promise & swear that I will be faithful, & bear true Allegiance to His Majesty King George, as lawful Sovereign of the Kingdom of Great Britain, & of these Provinces thereunto belonging ; And That I will defend Him to the utmost of my Power, against all traiterous conspiracies & attempts whatever which shall be made against his person, Crown & Dignity ; And That I will do my utmost endeavor to disclose & make known to His Majesty, His Heirs & Successors, all treasons,

& traiterous Conspiracies & attempts which I shall know to be against Him, or any of them—

And all this I do swear, without any equivocation, mental Evasion ; or secret reservation, & renouncing all pardons & dispensations from any person or power whatever to the contrary.

So help me God.

25. And be it further Enacted, by the Authority aforesaid, That whenever any Bill which has been passed by the Legislative Council & by the House of Assembly in either of the said Provinces respectively, shall be presented for His Majesty's Assent to the Governor, or L$^{t}$ Gov$^{r}$ of such Province, or to the person administring His Majesty's Government for the same, it shall & may be lawful for such Governor, or L$^{t}$ Gov$^{r}$ or other person, as aforesaid, at his discretion, subject nevertheless to such instructions as he may from time to time receive from His Majesty, His Heirs, & Successors, either to declare His Majesty's Assent to such Bill, or to declare that he withholds such Assent, or that he reserves the Bill, untill His Majesty's pleasure shall be signified thereon.

26. And be it further Enacted, by the Authority aforesaid, That no such Bill, which shall be so reserved, by the Gov$^{r}$ or L$^{t}$ Gov$^{r}$ or person administring His Majesty's Government, shall have the force of Law within the Province, in which the same shall have been so reserved, until such Gov$^{r}$ or L$^{t}$ Gov$^{r}$ or other person as aforesaid, shall signify either by Speech or Message to the said Legislative Council, & Assembly of such Province, or by Proclamation, that such Bill has been laid before His Majesty in Council, & that His Majesty has been pleased to approve the same.

27. And be it further Enacted by the Authority aforesaid, That all Laws, Ordinances, & Usages now in force in either of the said Provinces respectively, respecting the description, quality, trial, or punishment of Offences, or respecting the decision of any matters of controversy, relative to Property, or Civil Rights, shall remain, & continue to be of the same force & effect, in each of the said Provinces respectively, as at present, except in so far as the same are expressly varied by this Act, or in so far as the same shall, or may hereafter be repealed, altered, or varied by His Majesty, His Heirs, or Successors, by & with the advice & consent of the respective Legislative Councils & Assemblies of the said Provinces respectively.

28. Provided also, & be it Enacted by the Authority aforesaid, That if any person, or persons, holding any Lands in the said

Provinces or either of them, immediately of the Crown, or in any other manner than in free & common Soccage ; & having a right to alienate the same, shall at any time from & after the commencement of this Act, surrender the same into the hands of His Majesty, His Heirs, or Successors, by petition to the Governor, or L$^{t}$ Gov$^{r}$ or other person, or persons, administring the Government of the said Provinces respectively, setting forth, that he, She, or they, is, or are desirous of holding the same in free & common Soccage, such Governor, or L$^{t}$ Gov$^{r}$ or other person as aforesaid, shall thereupon cause a fresh grant to be made to such person, or persons, of such Lands to be holden in free & common Soccage.

Note.[1]

The 9$^{th}$ Section[2] of the Quebec Act, 14. G. 3.83. is not repealed by this Bill. That Section provides, that the Regulations in that Act (re-establishing the Canadian Laws in cases of Property,) should not extend to such Lands as the King should grant to be holden in free & common Soccage. It is presumed therefore that the English Laws will attach on these Lands, & that a special Enactment for that purpose is not necessary.

29. Provided nevertheless, & be it Enacted by the Authority aforesaid, That such surrender & Grant shall not avoid, or bar any right to any such lands so surrendered, or any interest in the same, to which any person or persons, other than the person or persons surrendering the same shall have been intitled, either in possession, remainder, or reversion, or otherwise, at the time of such surrender, but that every such right & Title shall be as valid, & effectual, as if such surrender, & Grant had never been made.

30. And whereas it has been declared by an Act passed in the 18$^{th}$ Year of the Reign of his present Majesty,[3] That the King, & Parliament of Great Britain will not impose any Duty, Tax or Assessment whatever, payable in any of His Majesty's Colonies Provinces & Plantations in North America, or the West Indies, except only such Duties as it may be expedient to impose for the Regulation of Commerce, the net Produce of such Duties to be always applied to, & for the use of the Colony Province, or Plantation, in which the same shall be respectively levied, in such manner as other duties collected by the Authority of the

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[1] This note is simply one of explanation and interpretation by the Secretary of State.
[2] See p. 573.
[3] 18th Geo. III., cap. 12. "An act for removing all doubts and apprehensions concerning taxation by the parliament of Great Britain in any of the colonies, provinces, and plantations in North America and the West Indies; "&c. Statutes at Large, Vol. 32, p. 4.

respective General Courts, or General Assemblies of such Colonies, Provinces or Plantations are ordinarily paid, & applied ;

And Whereas it is necessary for the general benefit of the British Empire, That such power of regulation of Commerce should continue to be exercised by His Majesty, & the Parliament of Great Britain, subject nevertheless to the condition herein before specified ; with respect to the Application of any duties which may be imposed for that purpose ;

Be it therefore Enacted, by the Authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend to prevent or affect the due execution of any Law which hath been or shall be enacted by His Majesty, & the Parliament of Great Britain for establishing Regulations & Prohibitions, & for imposing, levying, & collecting Duties for the regulation of Commerce & Navigation.

31. Provided always, & be it Enacted by the Authority aforesaid, That all Duties which shall be so imposed shall be subject & liable to the sole disposition of the Legislature of the respective Provinces, as established by this Act.

32. And be it further Enacted by the Authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend to prevent or hinder His Majesty from appointing, erecting, & constituting such executive Council or Councils as he may judge proper, in each of the said Provinces respectively. Or from nominating, & appointing thereto from time to time, such persons as he shall think fit to compose the same, or from removing therefrom any person or persons whom he may think fit so to remove.

33. And be it further Enacted, That nothing in this Act contained shall extend, or be construed to extend, to hinder His Majesty, His Heirs, & Successors from erecting, constituting & appointing by his, or their Letters patent, under the Great Seal of Great Britain, such Courts of Civil, Criminal, & Ecclesiastical Jurisdiction, within, or for the said Provinces respectively, & from appointing, from time to time, such Judges, & Officers thereof, as His Majesty, His Heirs, or Successors shall think necessary or proper, for the circumstances of the said Provinces.

34. And whereas, by reason of the distance of the said Provinces from this Country & of the change to be made by this Act, in the Government thereof, it may be necessary that some interval should elapse, between the notification of this Act to the said Provinces, & the day of its Commencement,

Be it therefore Enacted, by the Authority aforesaid, That it shall & may be lawful for His Majesty, by, & with the advice of His Privy Council, to fix & declare the day of the Commence-

ment, of this Act ; Provided that such Day shall not be more
Q. Q. than (six) months after the (25th day) of June in the Year of Our Lord, 1790.

Endorsed: Draft of a Bill.

For repealing certain parts of a Bill passed in the 14th Year of His Majesty's Reign, intitled, &c. &c. &c.

And for making further Provision for the Government of so much of His Majesty's Dominions in N. America, as are comprized within the limits assigned by the above mentioned Act to the said Province of Quebec.—

Copy transmitted to Lord Dorchester in Mr Secretary Grenville's Letter No 2.

## DORCHESTER TO GRENVILLE.[1]

No 15 QUEBEC 8th February 1790.

Sir,

I received the triplicate of your dispatch[2] No. 2 on the 20th of last month, and avail myself of the first opportunity to submit to His Majesty's Ministers such observations on the proposed Bill, as occur to me in the moment.

The inclosed Draught[3] comprehends the corresponding
A alterations, engrafted upon the Bill, transmitted in your letter.

The attainment of a free course of Justice throughout every part of His Majesty's possessions, in the way least likely to give umbrage to the United States, appears to me very desirable. For this reason the Boundaries of the two proposed Provinces are described by a precise Partition line only of the Country of Canada, with the Addition of such general words, as I hope might include the Territories subject to, or possessed by, His Majesty, to the southward of the forty fifth degree of North Latitude on the side of Lake Champlain, as well as on the side of Oswego, Niagara, Detroit, and Michilimakinac, corresponding as nearly as could be, with the idea expressed in your letter. But upon consulting the Chief Justice, relative to the operation of this description of the Boundary, I find, that he does not think it will answer the desired end.

The District of Gaspé it seems best for the present to leave annexed to the Province of Lower Canada, on account of its commercial connection with this province, and because, notwithstanding its distance, the communication of it with Quebec

[1] Canadian Archives, Q. 44-1, p. 20.
[2] See p. 987
[3] See below, p. 1006.

by water, is easier than its access to the seat of the Government of New Brunswick, in the present condition of that province ; the more so, as the difficulty of a representation from that District, in an Assembly at Quebec is greatly diminished, by the opening left in the Bill for non residents of any district being elected Representatives thereof.

But the Bay of Chaleurs being subject to different Governments, particularly during the present uninhabited state of that part of New Brunswick, gives an opportunity to ill disposed persons to elude the controul of the law, to the detriment of the Fisheries, and good order ; a clause to remedy this Evil is therefore inclosed, which, if approved of, may be introduced into the Bill, as an addition to the second clause.[1]

B

Many advantages might result from an hereditary Legislative Council, distinguished by some mark of honor, did the condition of the country concur in supporting this dignity ; but the fluctuating state of Property in these Provinces would expose all hereditary honors to fall into disregard ; for the present therefore it would seem more advisable to appoint the members during life, good behaviour, and residence in the province. The number for Upper Canada to be not less than seven, and for Lower Canada not less than fifteen, to be encreased by His Majesty, as the wealth and population of the Country may require. To give them as much consequence as possible, in the present condition of the Province, they should be selected from among the men of property, where talents, integrity, and a firm attachment to the Unity of the Empire may be found. I shall take the first opportunity of communicating the names of such persons, as appear to me the fittest objects of this description.

The House of Assembly for Upper Canada might consist of not less than Sixteen, and that for Lower Canada to not less than thirty members, or nearly double in number to the Legislative Councils, to be augmented also in proportion to the Population of the Country.

As far as I can judge at present it might be advisable to give the Towns of Quebec and Montreal in Lower Canada, a representation of four members each, and two to the Town of Three Rivers, dividing the Country Parishes thereof into twenty Circles, to send one member each. In Upper Canada the four districts of Luneburg, Mecklenburg, Nassau, and Hesse, to furnish four members each, and hereafter to be subdivided into as many Circles and Towns, as their condition may require. But the

[1]This is the clause marked B, given below, p. 1017.

present time is too short to enter into a more minute detail, for which reason it is proposed to fix only the smallest number of Members in the Bill, and to leave the actual subdivision and apportionment, necessary for an equal representation, to be ascertained by the Lieutenant Governors, with the advice of the Executive Councils, of the respective Provinces, under authority for that purpose from His Majesty.

The qualification of Electors, and persons to be Elected, as to birth, has been extended to inhabitants of the Provinces before and since the conquest, because they may be considered upon an equal footing with the natives, and to foreigners naturalized, because an accession to the Provinces of light and property from abroad is desirable, and not likely to injure the King's interest, under the guards proposed.

The disqualifications of Persons, attainted for Treason, and Felony, Deserters from the Militia when called out into service, and Bankrupts, until the full payment of their debts, have been added to the fourteenth clause, as a check to these evils, and from a persuasion, that persons of that description are not entitled to any political honors or consequence.

On the expediency of inserting any commercial regulations, as exceptions to the Laws of Canada, previous to investing the Assembly in Lower Canada with a right to negative all future changes, I regret that the complicated and professional nature of the subject, prevents my forming any other than a general opinion, that whatever regulations of this sort shall be thought proper to be adopted, should be enacted Specially, unfolded to the people, and not introduced in bulk, and by general description.

The introduction of a Soccage Tenure I think necessary in the upper country, and advisable in every part of the province, and this free of Quit-rents from all, holding no more than one thousand acres, as recommended in my letter to Lord Sydney[1] N° 18. And the Quitrent, which it may be judged proper to lay on large Tracts, should be given up to the Provincial Governments for their Support, that all seeds of discord between Great Britain and her Colonies may be prevented. And independent of this important consideration perhaps the true principle of Oeconomy is rather to obviate the necessity of sending money abroad, than to bring home any from Quitrents or Duties of any kind.

I take it for granted, that the benefits, arising to the subject, from a change of the tenure in Fief to that in Common Soccage, are meant to run throughout, as from the King to His Tenant, so

[1] See Dorchester to Sydney, June 13th, 1787; given at p. 947.

from the latter to all his Under-tenants, at the time of change ; Otherwise the advantages will be confined to a few, and an interest created unfriendly to the improvement of the country. Some alterations have been made in the clause relative to this point, with a view of clearing doubt upon the subject.

The commencement of the operation of the Act, as to every part, excepting only the issuing the Writs of Election, and calling together the Houses of Assembly of the respective Provinces, has been fixed at such time, as may be declared by His Majesty, with the advice of His Privy Council, not later than Six months after the notification of the Act in this Country, which I think will allow time sufficient for all necessary arrangements, as to these points.

But for the Convocation of the Assemblies a more distant period appears to be necessary, for the reasons above stated. As soon as the proper plans for their organization shall have been prepared, His Majesty may order the Assemblies to be convened, as soon as convenient, previous to the first of January, 1792, as suggested in the thirty first clause of the Bill, to which is likewise added a proposal for the temporary Government of the two Provinces in the interval, by the Lieutenant Governors, and Legislative Councils thereof, According to the model of the Quebec Bill.

Should this be approved, the Royal indulgence of returning to England for a few months on my private affairs, would give me an opportunity to lay before His Majesty's Ministers all further explanations in my power on this subject.

Before I conclude, I have to submit to the wisdom of His Majesty's Councils, whether it may not be advisable to establish a General Government for His Majesty's Dominions upon this Continent, as well as a Governor General, whereby the united exertions of His Majesty's North American Provinces may more effectually be directed to the general interest, and to the preservation of the Unity of the Empire.[1]

C I inclose a copy of a letter from the Chief Justice, with some
D additional clauses, upon this subject,[2] prepared by him at my
E request, together with his draught of an other proposed addition
F to the Bill, to provide for the trial of foreign treason and murder,[3] as also a copy of his letter respecting the operation of the Boundary, as described in the Bill,[4] with his idea of the Addition necessary to give free scope to our Courts of Justice.[5] The clause

[1] See below, p. 1020.
[2] See below, p. 1018.
[3] See below, p. 1024.
[4] See Q 44-1, p. 79.
[5] See Q 44-1, p. 83.

above referred to under the letter B was also prepared by him at my request.

I am with much respect and esteem,
Sir,
Your most obedient, and most humble servant.
DORCHESTER

The Right Hon[1]
Wm. W. Grenville

## SECOND DRAUGHT OF CONSTITUTIONAL BILL.[1]

1. Mem. The limits between New York and the Province of Quebec were adjusted by the Crown in Privy Council in 1766, and communications made to the Governors through the Board of Trade[2].

May it therefore please Your Most Excellent Majesty that it may be enacted, and be it enacted, by the King's most Excellent Majesty, by and with the advice, and consent of the Lords spiritual and temporal and commons, in this present Parliament assembled, and by the authority of the same, that so much of the said Act, as in any manner relates to the establishment of the boundaries of the Province of Quebec or to the appointment of a Council for the affairs of the said Province or to the power given by the said Act to the said Council or to the major part of them to make Ordinances for the peace, welfare and good Government of the said Province, with the consent of His Majesty's Governor, Lieutenant Governor, or Commander in Chief for the time being, shall be, and the same is hereby repealed.

2. This Clause is entirely new. See also the Clause B, which is proposed by the Chief Justice to be inserted at the end of this Clause.[3]

And be it also Enacted by the Authority aforesaid, that the Country of Canada shall be, and the same is hereby, divided into two Provinces to be called the Province of Upper Canada and the Province of Lower Canada, which Provinces shall be separated by a partition line of various courses running due South from a Stone boundary fixed on the north bank of the Lake Saint Francis in a cove of the River of Saint Lawrence, West of Point au Boudet in the limit between the Township of Lancaster and the seigniory of New Longueuil to the Southernmost extent of His Majesty's Dominions and running in a Northerly direction from the aforesaid stone boundary along the Western or inland bounds of the said Seigniory of New Longueuil and of the Seigniory of Vaudreuil, according to their various courses, until it strikes the Uttawas River, thence in a direct Line to the nearest point in the centre of the navigable channel of the said river, thence ascending the middle of the navigable Channel of the said river to the Lake Temiscaming, thence through the middle of

[1] Canadian Archives, Q 44-1, p. 30. The first draught of the Constitutional Bill having been sent to Dorchester for his supervision and completion, we have here the second draught of the bill as amended by him, with the assistance of Chief Justice Smith.

[2] This boundary was first defined by the Proclamation of 1763, but was afterwards revised. See note 3, p. 485.

[3] See below, p. 1017.

the said Lake to the most Northerly extremity thereof, and thence running due North, to the boundary of the Territory granted to the Merchants Adventurers of England trading to Hudson's Bay.[1] The Province of Upper Canada to comprehend all the Territories, Lands and Countries, which are now subject to, or possessed by His Majesty, to the westward and southward of the said Partition Line ; and the Province of Lower Canada to comprehend all the Territories, Lands and Countries, which are now subject to, or possessed by His Majesty to the eastward of the said partition Line, and to the southward of the southern boundary of the said Territories granted to the Merchants Adverturers of England, trading to Hudson's Bay, being no part of the Government of Newfoundland or any other of His Majesty's Provinces in North America, at the time of passing this Act.[2]

3. And be it further enacted by the authority aforesaid, that there shall be, within each of the said Provinces respectively, a Legislative Council and a house of Assembly, to be severally composed and constituted, in the manner hereinafter described.

And that in each of the said Provinces, respectively, His Majesty, His Heirs, or Successors shall have power, by and with the advice and consent of the Legislative Council, and House of Assembly of such *Provinces respectively*, to make Laws for the peace, welfare, and good Government thereof ; And that such laws being passed by the Legislative Council, and House of Assembly, of either of the said Provinces, *respectively* and being assented to by His Majesty, His Heirs, or Successors, or being assented to, in His Majesty's name, by such person as His Majesty shall from time to time appoint to be His Governor or Lieutenant Governor of such Province ; or as His Majesty shall from time to time appoint to administer His Government within the same, in the absence of such Governor or Lieutenant Governor, shall be valid, and binding on the Inhabitants of the Province, in which the same shall have been so passed.

4. And be it further enacted by the authority aforesaid that for the purpose of constituting such Legislative Council, as afore-

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[1] This follows with some verbal changes the boundary as previously given by Dorchester. See p. 960.

[2] As to the difficulty of defining the boundaries of the Canadas, see note 3, p. 992; also Dorchester to Grenville, Feb. 8th, p. 1002. A suggestion of Chief Justice Smith was rather ingenious, "If to Your Lordship's description, there be an addition, importing, that by *Canada* is meant whatever the French claimed as New France, until His Majesty shall otherwise declare by Proclamation, the boundaries of the New Provinces will be what the wisdom of the Crown shall see expedient, without waiting for the intervention of Parliament; and the Colony Legislatures and Courts be unembarrassed; the French Government having made Grants down to the south end of Lake George and asserting a dominion all round the Inland Great Lakes. A clause to this effect is enclosed and submitted to Your Lordship's Pleasure." Q 44-1, p. 81. The clause is as follows:—"And the Country of Canada herein before mentioned shall be deemed and adjudged to include all the Dominions of New France as claimed by the French Crown before the Conquest until His Majesty shall otherwise declare by an Instrument to be issued with the advice of His Privy Council under the Great Seal of Great Britain." Q 44-1, p. 83.

said, in each of the said Provinces respectively, it shall and may be lawful for His Majesty, His Heirs or Successors, by and with the advice of the Privy Council, to authorize and direct His Governor, or Lieutenant Governor or Person administering His Government in each of the said Provinces respectively, within the *time hereinafter mentioned*, in His Majesty's name and by an Instrument under the Great Seal of the Province to summon to the said Legislative Council, to be established in each of the said Provinces respectively a sufficient number of discreet and proper persons being not fewer than (7) to the Legislative Council for the Province of Upper Canada ; and not fewer than (15) to the Legislative Council for the Province of Lower Canada. And that the Persons so summoned shall *thereby* become members of the Legislative Councils, to which they shall respectively have been so summoned, and shall constitute and compose the same respectively. And that it shall also be lawful for His Majesty, His Heirs or Successors from time to time, by and with the advice of the Privy Council to authorize and direct His Governor or Lieutenant Governor or Person administering His Government, in each of the said Provinces respectively to Summon to the said Legislative Councils of the said Provinces respectively in like manner, such other person or Persons, as His Majesty, His Heirs or Successors shall think fit.

by Virtue of such Summons— (sic in MS.)

by Virtue of such Summons

These words are new (sic in MS.)

And that every Person who shall be so summoned to the Legislative Council of either of the said Provinces respectively shall *thereby* become a Member of such Legislative Council, to which he shall have been so summoned. *And the* major part of them duly assembled shall constitute a Legislative House or Council.

5. Provided always, and be it enacted by the authority aforesaid that no person shall be summoned to the said Legislative Council, in either of the said Provinces, who shall not be of the full age of twenty one Years, and who shall not be a natural born subject of His Majesty,

These words are new. (sic in MS)

or shall not have been an Inhabitant of one of the said Provinces before and since the thirteenth day of September One thousand seven hundred and fifty nine, or else being of foreign birth, shall not have been naturalized by an Act of Parliament or a law of the Province.

6. And be it further Enacted that every member of each of the said Legislative Councils shall hold his seat therein for the term of his life, but subject nevertheless to the Provisions hereinafter contained, for vacating the same, in the cases hereinafter Specified.

7. Provided always and be it enacted by the authority aforesaid, that if any member of either of the said Legislative Councils shall leave the Province, for which he was appointed a Councillor, and shall reside out of the same, for the space of one year continually, without the permission of the Governor, or Lieutenant Governor, of the Province, or of the Person administering His Majesty's Government there, such permission to be signified to such Legislative Council, by such Governor, Lieutenant Governor or Person administering His Majesty's Government, or if *he* shall reside out of such Province, for the space of two years continually without the permission of His Majesty, His Heirs & Successors, signified to such Legislative Council by the Governor, or Lieutenant Governor of the Province, or Person administering His Majesty's Government there ; or if any such member shall take any Oath of Allegiance or Obedience to any foreign Prince, or Power, his seat in such Council shall thereby become vacant.

any such member

8. Provided also, and be it enacted by the Authority aforesaid ; that if any member of either of the said Legislative Councils shall be attainted for Treason, or Felony, his seat in such Council shall thereby become vacant.

9. And be it further enacted, that the Governor, or Lieutenant Governor of the said Provinces respectively, or the Person administering His Majesty's Government therein respectively, shall have power and authority from time to time, by an instrument under the Great Seal of the said‡ Province, respectively,‡ to constitute, Appoint and remove the Speakers of the Legislative Councils of such Provinces respectively.

‡the words "said" & "respectively" inserted in pencil above the line.

10. And be it further enacted by the authority aforesaid, that for the purpose of constituting such Assembly as aforesaid, in each of the said Provinces respectively, it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize and direct His Governor or Lieutenant Governor, or Person administering His Government in each of the said Provinces respectively, within *the time hereinafter mentioned* in His Majestys Name, and by an Instrument under the Great Seal of such Province respectively, to call together an Assembly in and for such Province.

11. And be it further enacted by the authority aforesaid, that for the purpose of electing the members of such Assemblies respectively, it shall and may be lawful for His Majesty, His Heirs, or Successors, to authorize His Governor, or Lieutenant Governor, of each of the said Provinces, or the Person, administering His Government therein respectively, to issue a Proclamation dividing such Province into districts, Counties *or circles and Towns* and appointing the limits thereof, *and fixing*

*and declaring the number of Representatives to be chosen by each* : And that it shall also be lawful for His Majesty to authorize such Governor, or Person as aforesaid, to nominate and appoint proper Persons *under the name of Sheriffs and Bailiffs or any other name* to execute the office of *Returning Officer*, in each of the said Districts, Counties *or Circles and Towns* respectively.

‡sic in MS. (12th Clause omitted here‡)[1]

12. This clause is new. (sic in MS) Provided always, and be it Enacted by the authority aforesaid that the whole number of Members to be chosen in the Province of Upper Canada shall not be less than sixteen, and that the whole number of Members to be chosen in the Province of Lower Canada shall not be less than thirty.

13. And be it further enacted that Writs for the Election of Members to serve in the said Assemblies respectively shall be issued by the Governor or Lieutenant Governor or Person administering His Majesty's Government, within the said Provinces respectively, within (14) days after the sealing of such instrument as aforesaid, and shall be directed to the respective returning Officers of the said Districts, Counties, *or Circles and Towns* ; And that the Form of such Writs shall be, as nearly as may be, conformable to that of the Writs, issued in Great Britain, for the Election of Members to serve in Parliament ; And that such returning Officers, shall, and they are hereby authorized and required, duly to execute such Writs, and all other writs, which shall issue in pursuance of this Act, and shall be directed to them ; And that writs shall in like manner and form, be issued for the Election of Members in the case of any vacancy which shall happen by the Death of the person chosen ; or by his being summoned to the Legislative Council of either Province, in which case it is hereby enacted that the person so summoned shall no longer continue a member of the said houses of Assembly or either of them.

And be it also enacted, that in the case of any vacancy by the death of the person chosen, or by reason of his being so summoned as aforesaid, the writ for the election of a new member in the room of the person, so dead, or so summoned, shall be issued within six days *after the same shall be* made known to the proper office for issuing such Writs of Election.

new (Sic in MS.)

*Sic in MS. Clause 14—omitted*

14. And be it further enacted that no person shall be capable of voting at any election of a member to serve in such Assembly in either of the said Provinces, or of being elected at any* election *who shall not be* of the full age of twenty one years, and who

*such (Sic in MS.)

[1] Clause 12 of the first draught is left out, while clause 12 of the present draught takes the place of clause 14 of the first. There are several other changes of a like nature.

new (Sic in MS) shall not be a natural born subject of His Majesty, [or have been an Inhabitant of one of the said Provinces, before and since the thirteenth day of September One thousand, seven hundred and fifty nine, or else being of foreign birth, shall not have been naturalized by Act of Parliament, or a law of the Province.

And be it also enacted by the same authority, that no person shall be capable of voting at any election of a member to serve in such Assembly, in either of the said Provinces, or of being elected at any election who shall from and after the commencement of this Act, be attainted for Treason or Felony, or who shall desert from the Militia of either of the said Provinces when called out into service, or who having become bankrupt after the time aforementioned shall not thereafter have made full and entire payment of his debts.

new (Sic in MS)

15. And be it further enacted that the members for the several districts, Counties *or Circles*, of the said Provinces respectively, shall be chosen by the Majority of Votes of such persons qualified to vote as aforesaid, as shall severally be possessed of [*Lands or Tenements* within such District, County or Circle, being held in Freehold or in Fief or in Roture, or by certificate derived under the authority of the Governor and Council of the Province of Quebec,] of the yearly value of Five pounds Sterling, for their own use and benefit and over and above all rents and Charges, payable out of or in respect of, the same [within each of the said Provinces respectively.]

new (Sic in MS)

new (Sic in MS)

And that the Members for the several Towns within the said Provinces *respectively* shall be chosen by the majority of votes of such persons, qualified to vote as aforesaid, as shall severally be possessed of *a Dwelling house and Lot of Ground in such Town or in the Township or Parish* thereof held in like manner *as aforesaid*, or as having been resident within such town, or in the Township, or Parish thereof for the space of Twelve months next before the date of the Writ of Summons for the election, shall be possessed of the value of One hundred Pounds Sterling in personal property within the same.

16. And be it further enacted by the authority aforesaid, that every Voter, before he is admitted to give his Vote, at any such election, shall if required by any of the Candidates or by the returning Officer take the following Oath, which shall be administered in the English or French Language as the case may require :

I A.B. do declare and testify in the presence of Almighty God, that I am, to the best of my knowledge and belief, of the full age of Twenty one years (and a natural born subject of His

Majesty King George) or and (that I have been an Inhabitant of one of His Majesty's Provinces of Upper or lower Canada, before and since the thirteenth day of September One thousand seven hundred and fifty nine) or (and that I have been naturalized by Act of Parliament or a law of the Province) and that I have not been polled before at this election.

new (sic in MS)

17. And be it further enacted by the Authority aforesaid, that it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize His Governor or Lieutenant Governor, of each of the said Provinces respectively, to fix the time and place of holding such elections, and to nominate proper persons to preside at the Elections *for the Towns*, and to make returns of the same, subject nevertheless to such Provisions, as may hereafter be made in these respects by the Legislature of the Province.

This appears unnecessary, if the former Clause stands. (sic in MS.)

18. And be it further enacted by the authority aforesaid, that it shall and may be lawful for His Majesty, His Heirs or Successors to authorize His Governor, or Lieutenant Governor of each of the said Provinces respectively, or the person administering His Government therein respectively to fix the places and times of holding the first and every other Session of the Legislative Council and Assembly of each of the said Provinces and to prorogue the same from time to time, and to dissolve the same by Proclamation or Proclamations or otherwise whenever he shall judge it necessary.

19. Provided always, and be it enacted by the authority aforesaid, that the said Legislative Council, and Assembly, in each of the said Provinces, shall be called together once at the least in every twelve Calendar months ;

And that every Assembly shall continue for (7) years from the day of the Return of the Writs for chusing the same, and no longer, subject nevertheless, to be sooner dissolved by the Governor, or Lieutenant Governor of the Province, or Person, administering His Majesty's Government there.

20. And be it further enacted, by the Authority aforesaid, that all questions which shall arise in the said Legislative Councils, or Assemblies, respectively shall be decided by the Majority of Voices.

And that in cases where the Voices shall be equal the Speaker of such Council, or Assembly, as the case shall be, shall have a casting Voice.

new

And that one half of the whole number of the members of each Assembly respectively, duly assembled, and attending shall constitute a House of Assembly

21. Provided always, and be it enacted by the authority aforesaid, that no member either of the Legislative Council, or Assembly, in either of the said Provinces, shall be permitted to sit, or to vote, therein, untill he shall have taken and Subscribed the following Oath, either before the Governor or Lieutenant Governor, of such Province, or Person administering His Majesty's Government there, or before some Person, or Persons, authorized by the said Governor or Lieutenant Governor, or other Person, as aforesaid, to administer the same; And that the same shall be administered in the English or French, Language, as the case shall require :

I A.B. do sincerely promise and swear, that I will be faithfull, and bear true Allegiance to His Majesty, King George, as Lawful Sovereign of the Kingdom of Great Britain, and of these Provinces thereunto belonging, and that I will defend him to the utmost of my power against all traiterous conspiracies, and attempts, whatever, which shall be made against His Person, Crown, and Dignity ; and that I will do my utmost endeavour to disclose and make known to His Majesty, His Heirs, or Successors, all treasons and traiterous conspiracies, and attempts which I shall know to be against him or any of them; And all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations, from any Person, or Power, whatever, to the contrary.

So help me God.

22. And be it further enacted by the authority aforesaid, that whenever any Bill, which has been passed by the Legislative Council, and by the House of Assembly, in either of the said Provinces respectively, shall be presented for His Majesty's assent, to the Governor or Lieutenant Governor of such Province, or to the Person administering His Majesty's Government for the same, it shall and may be lawful for such Governor, or Lieutenant Governor, or other Person as aforesaid, at his discretion, subject nevertheless to such Instructions as he may from time to time receive from His Majesty, His Heirs, or Successors, either to declare His Majesty's Assent to such Bill, or to declare, that he withholds such assent, or that he reserves the Bill, until His Majesty's pleasure shall be signified thereon.

23. And be it further enacted by the Authority aforesaid, that no such Bill, which shall be so reserved, by the Governor, or Lieutenant Governor, or Person administering His Majesty's Government, shall have the force of Law within the Province, in which the same shall have been so reserved, until such Governor, or Lieutenant Governor, or other Person as aforesaid, shall

signify either by Speech or Message to the said Legislative Council and Assembly of such Province, or by Proclamation, that such Bill has been laid before His Majesty in Council, and that His Majesty has been pleased to approve the same.

24. And be it further enacted by the authority aforesaid, that all Laws, Ordinances, and usages, now in force, in either of the said Provinces respectively, respecting the description, quality, trial or punishment of offences, or respecting the decision of any matter of controversy, relative to property, or civil rights, shall remain, and continue to be of the same force, and effect, in each of the said Provinces respectively, as at present, except in so far, as the same are expressly varied by this Act, or in so far, as the same shall, or may, hereafter be repealed, altered, or varied, by His Majesty, His Heirs, or Successors by and with the advice and consent of the respective Legislative Councils, and Assemblies of the said Provinces respectively.

25. Provided also, and be it enacted by the authority aforesaid, that if any Person, or Persons, holding any Lands in the said Provinces, or either of them, immediately of the Crown *in Fief*, or in any other manner, than in free and common Soccage, and having a right to alienate the same, shall at any time from and after the commencement of this Act, surrender the same into the hands of His Majesty, His Heirs, or Successors, by petition to the Governor, or Lieutenant Governor, or other Person administering the Government of the said Provinces respectively, setting forth, that he, she, or they, is or are, desirous of holding the same in free and common Soccage, such Governor, or Lieutenant Governor, or other Person, as aforesaid, shall thereupon cause a fresh Grant to be made to such Person or Persons of such Lands, to be holden in free and common Soccage.

And every such change of Tenure shall work the absolute extinguishment of all Mutation, Fines, burthens and incumbrances within the Tract so surrendered, and regranted, to which the same, or any part thereof, would or might have been liable, under the laws and customs, concerning lands held in Fief or in Roture, or in any other manner than in free and common Soccage in either of the said Provinces.

new (sic in MS)

26. Provided nevertheless, and be it enacted by the Authority aforesaid, that such surrender and grant, shall not avoid or Bar, any right to any such lands so Surrendered, or any interest in the same, to which any Person or Persons, other than the Person, or Persons, surrendering the same, shall have been intitled, either in possession, remainder, or reversion, or otherwise, at the time of such surrender, but that every such right and title shall

see Clause E. containing an extension proposed to be given to the Criminal Law.[1] (sic in MS)

[1] See p. 1024.

be as valid, and effectual, as if such surrender and grant had never been made.

27. And whereas it has been declared by an Act, passed in the eighteenth Year of the Reign of His present Majesty,[2] that the King and Parliament of Great Britain will not impose any Duty, Tax, or Assessment whatever, payable in any of His Majesty's Colonies, Provinces, and Plantations, in North America, or the West Indies, except only such duties, as it may be expedient to impose for the regulation of Commerce, the Net Produce of such Duties to be always applied to and for the use of the Colony, Province or Plantation, in which the same shall be respectively levied, in such manner as other duties collected by the authority of the respective General Courts or General Assemblies, of such Colonies, Provinces or Plantations, are ordinarily paid and applied.

And whereas it is necessary for the general benefit of the British Empire, that such Power of Regulation of Commerce should continue to be exercised by His Majesty, and the Parliament of Great Britain, subject nevertheless to the condition herein before Specified, with respect to the application of any Duties, which may be imposed for that purpose;

Be it therefore enacted by the authority aforesaid, that nothing in this Act contained shall extend, or be construed to extend, to prevent, or affect the due execution of any Law, which has been, or shall be enacted by His Majesty, and the Parliament of Great Britain for establishing Regulations, and Prohibitions, and for imposing, levying, and collecting, Duties for the Regulation of Commerce and Navigation.

28. Provided always and be it enacted by the authority aforesaid, that all Duties, which shall be so imposed, shall be subject, and liable, to the sole disposition of the Legislatures of the respective Provinces, as established by this Act.

29. And be it further enacted by the authority aforesaid, that nothing in this act contained, shall extend, or be construed to extend, to prevent or hinder His Majesty from appointing, erecting, and constituting, such Executive Council, or Councils, as He may judge proper, in each of the said Provinces respectively; or from nominating, and appointing thereto, from time to time, such Persons, as He shall think fit to compose the same, or from removing therefrom, any person, or persons, whom He may think fit so to remove.

30. And be it further enacted, that nothing, in this Act contained, shall extend, or be construed to extend, to hinder

[2] See note 3, p. 1000.

His Majesty, His Heirs, or Successors, from erecting, constituting, and appointing, by His, or Their letters Patent, under the Great Seal of Great Britain, such Courts of Civil, Criminal, and Ecclesiastical Jurisdiction, within, or for, the said Provinces, respectively, and from appointing, from time to time, such Judges, and Officers, thereof, as His Majesty, His Heirs, or Successors, shall think necessary, or proper, for the circumstances of the said Provinces.

31. And whereas by reason of the distance of the said Provinces from this Country and of the change to be made by this Act in the Government thereof, it may be necessary that some interval should elapse, between the notification of this Act to the said Provinces and the day of its commencement.

Be it therefore enacted by the authority aforesaid that it shall and may be lawful for His Majesty with the advice of His Privy Council, to fix and declare, the day of the commencement thereof—Provided that such day shall not be more than six months after the notification of the said Act, in each of the respective Provinces as to all and every part thereof, excepting only the issuing the Writs of election and calling together the houses of Assembly of each of the said Provinces respectively which it shall and may be lawful for His Majesty by and with the advice of His Privy Council to order, and direct at any time not exceeding the first day of January in the year of our Lord One thousand seven hundred and ninety two.

But to the end of a temporary provision for the welfare of the said Provinces until laws shall be made for the same by the Legislative Councils and Assemblies thereof respectively as herein before declared.

Be it also enacted by the same authority that the Governor, Lieutenant Governor or Person administering His Majesty's Government in each of the said Provinces with the Legislative Council shall and may make ordinances to be binding within the same respectively without an Assembly, to the extent and under the Conditions, restraints and Limitations declared respecting the power and Authority of the Legislative Council mentioned in the Act of the fourteenth year of His Majesty's Reign—Chapter 83.[1]

D

Endorsed.

A.

In Lord Dorchesters to Mr. Grenville N° 15. of 8 February 1790.

[1] The Quebec Act, see p. 570.

SESSIONAL PAPER No. 18

## BOUNDARY BETWEEN QUEBEC AND NEW BRUNSWICK.[1]

B. And whereas doubts have arisen concerning the Partition Line between the Province of Quebec and the Province of New Brunswick and the Coast of the Fisheries in the Gulph of Saint Lawrence is at present a part of each Province, and many inconveniences prejudicial to the due management of the said Fisheries arise from the want of a regular and competent Government, and the uninhabited condition of that part of the Coast comprehended in the said Province of New Brunswick.

Be it therefore also enacted by the authority aforesaid that it shall be lawful for His Majesty, His Heirs, or Successors, with the advice of His or their Privy Council, to declare and establish the Partition and division between the said two provinces of Lower Canada and New Brunswick, by any Instrument to be issued under the Great Seal of Great Britain.

Provided always, and be it also hereby enacted that the declaration and establishment, so to be made, shall not operate to the defeating or annulling of any title or Property, already duly acquired under the authority of either of the said Provinces ; And that until His Majesty, His Heirs, or Successors, shall issue such instrument and declaration, the Jurisdiction of the said Province of Lower Canada shall extend over and comprehend, all that part of the said Province of New Brunswick along the coast of the said Gulph of S$^{t}$ Lawrence, which is situated to the northward of a line running through the middle of Focadie Bay to the most Westerly or extreme head thereof and thence in a Westerly direction at the distance of ten miles from the shore of the said Coast, until it strikes the boundary of the Province of Lower Canada ; but that any titles to Estates in Lands within the present limits of New Brunswick shall be as valid as if this Act had never been made.

D

Endorsed—

B.

In Lord Dorchester's to Mr. Grenville N° 15 of the 8$^{th}$ February 1790.

[1] Q 44-1, p. 59. This is clause B, draughted by Chief Justice Smith, referred to in side note to sec. 2 of the above draught of the Constitutional Bill. See p. 1006.

## CHIEF JUSTICE SMITH TO DORCHESTER.[1]

Copy/ Quebec 5th February 1790

My Lord,

The clause inclosed for the Trial of extraprovincial offences[2] appears to me to be necessary to encourage that spirit of Enterprize, which leads our people in the Fur Trade to explore the Depths of this Continent, and has carried them almost over to the Eastern shores of the Pacific Ocean. This Commerce, elsewhere wearing out, by the encreased Population of the northeastern parts of the antient Continent, will soon become the monopoly of our nation. I have couched it in terms least likely of any that occur to me, to excite the Jealousy of our Neighbours.

The Bill with the other additions for the intended Reforms in this Country, left to be supplied by Your Lordship's local Experience,[3] greatly improves the old model of our colonial Governments ; for even those called the Royal Provinces, to distinguish them from the Proprietary and chartered Republics of the Stuart Kings, had Essential Faults, and the same general tendency.

Mr Grenville's plan will most assuredly lay a foundation for two spacious, populous and flourishing Provinces, and for more to grow out of them; and compose, at no remote period, a mass of Power very worthy of immediate attention.

I miss in it however, the expected Establishment to put what remains to Great Britain of Her Antient Dominions in North America, under one general direction, for the united interest and safety of every Branch of the Empire.

The Colonies of England were flourishing Colonies. It was the natural effect of the connection, the Character of the People, and the Genius of the English Constitution. Our's will be so too. But that prosperity may be their ruin. And I trust in God that the wisdom, which is dictating the new Arrangements for us, will perfect its work, by a system to prevent our repeating the Folly, that has plunged the severed parts of the Continent into poverty and distress.

Native as I am of one of the old Provinces, and early in the public service and Councils,[4] I trace the late Revolt and Rent to a remoter cause, than those to which it is ordinarily ascribed. The Truth is that the Country had outgrown its Government, and wanted the true remedy for more than half a century before the Rupture commenced. To what period it continued to be practicable is problematical, and need not now be assigned.

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[1] Canadian Archives, Q 44-1, p. 61. This is section C of the enclosures in Dorchester's despatch to Grenville, of Feb. 8th, 1790.

[2] Given below, see p. 1024.

[3] Referring to the first draught of the Constitutional Bill, (see p. 992) with the additions and amendments made by Dorchester, and embodied in the second draught (see p. 1006) which constitutes section A of the enclosures in Dorchester to Grenville, of Feb. 8th.

[4] He was a native of New York and a member of the Council of that Province before the Revolution.

SESSIONAL PAPER No. 18

To expect wisdom and moderation from near a score of Petty Parliaments, consisting in effect of only one of the three necessary branches of a Parliament, must, after the light brought by experience, appear to have been a very extravagant Expectation. So it has been to my view above twenty years, and I did not conceal it.

My Lord, an American Assembly, quiet in the weakness of their Infancy, could not but discover in their Elevation to Prosperity, that *themselves* were the substance, and the Governor and Board of Council mere shadows in their political Frame. All America was thus, at the very outset of the Plantations, abandoned to Democracy. And it belonged to the Administration of the days of Our Fathers to have found the Cure, in the Erection of a Power upon the Continent itself, to controul all its own little Republics, and create a Partner in the Legislation of the Empire, Capable of consulting their own safety, and the common welfare.

To be better understood by your Lordship I beg leave to put a paper[1] under this cover, in the form of additions to the present proposed Bill, partly suggested by the necessity of something to give a real and useful significancy to Your Lordship's nominal command of more Provinces than this.[2]

As to the moment for commencing such an Establishment, that certainly must be the worst, when it shall be most wanted. And since its Erection will speak Intentions, and may give Umbrage, that will be the best time, in which that Umbrage shall excite the least apprehension.

The Debility of our Neighbours is notorious, nor can be succoured during the Distractions of France, and the consternation Spread by those Distractions through all Europe.

Here in these provinces, where it is of much consequence, to set out with good habits, what juncture can be so favourable, as when the thousands thrown into them, under Your Patronage and Direction, have their Loyalty confirmed by Resentments for their Sufferings ; and so are disposed to take, and especially from Your hand, whatever the wisdom of Great Britain shall prescribe, as a Gift of her Benevolence.

As to Canada, I mean that part of it to become Lower Canada, the Biasses in it, if there are any remaining, to the Stock, from which it was severed, are become perfectly harmless, by that Body of English Loyalty Your Lordship has planted in the West—By their aversion to share in the Burdens and Miseries of the Revolted Colonies, and by the growing Discernement, that our safety and Prosperity is only to be found in the Commerce and Arms of Great Britain.

I am old enough to remember, what we in the Maritime Provinces[3] dreaded from this French Colony in the North, and what it cost to take away that dread, which confined our Population to the Edges of the Atlantic ; and my mind is therefore carried, under such an Administration as

[1] Referring to the enclosure which follows, see p. 1020.

[2] Lord Dorchester was appointed Governor, not only of Canada but of all the other British Provinces. See note 2, p. 810.

[3] Meaning the Maritime Provinces of the old British Colonies, now the Atlantic States.

the present one, into a strong Persuasion, that nothing will be neglected to enable Great Britain, so to serve herself of that Power, she already possesses here, as to check any Councils to be meditated to her Detriment, by the new Nation she has consented to create. She may do more!—but this is out of my province.

So much, my Lord, You'll forgive me. I could not repress what I owed to the vindication of my zeal, in the sacrifice of my fortune for the British Interest, and as I think still for the best Interests too of the Country of my Birth. Most of all I owed it to my Sovereign, in whose Grace I found a Relief at the end of the Storm.

With a deep and grateful sense of all Your kindnesses and the honour of your request of my poor abilities, upon questions of so great magnitude and consequence.

I am, My Lord, with the highest respect and esteem
Your Lordship's
most humble and
most obedient Servant
(signed) WM. SMITH

Right Hon^ble
Lord Dorchester D.

Endorsed.

C.

In Lord Dorchester's to Mr. Grenville N° 15.
of 8th February 1790.

## PROPOSED ADDITIONS TO THE NEW CANADA BILL FOR A GENERAL GOVERNMENT.[2]

And to provide still more effectually for the Government safety and prosperity of all His Majesty's Dominions in North America, and firmly to unite the several branches of the Empire.

(1) Be it also enacted by the same authority that there shall be (with a Governor General) a Legislative Council and a General Assembly for all His Majesty's Dominions and the Provinces whereof the same do now or may hereafter consist in the parts of America to the Southward of Hudsons' Bay, and in those seas to the Northward of the Bermuda or Somers Islands ; And that His Majesty, His Heirs and Successors shall have power by and with the advice and consent of the said Legislative Council and General Assembly to make laws for the peace, welfare and good

[1] Referring to the enclosure which follows.

[2] Canadian Archives, Q 44-1, p. 68. This is section D of the enclosures in Dorchester's despatch of Feb. 8th. It consists of the additions to the Constitutional Bill proposed by Chief Justice Smith with a view to forming a general government for the remaining British Colonies. It applies to Canada an idea already suggested by several parties, among them the Chief Justice himself, for the unification of government and administration among the older colonies.

Government of all or any of the said Provinces and Dominions : And that such Laws being passed by the said Legislative Council and General Assembly and being assented to by His Majesty, His Heirs and Successors, or being assented to in His Majesty's name by the Person appointed or to be appointed Governor General of the Provinces and Dominions aforesaid, or such person as may be appointed by the Crown to exercise the powers of Governor General on the death or absence of such Governor General, shall be valid and binding on the inhabitants of the said Dominions or such part thereof as shall for that purpose be expressed.

(2) And be it enacted by the same authority that such Legislative Council may be composed of at least * Members from each of the said Provinces to be appointed as His Majesty by His Royal Instructions to the Governor General for the time being shall authorize and direct, who shall hold their several places in the said Council for Life subject nevertheless to such terms and conditions as are herein before declared to be annexed to the trust and station of a member of the Legislative Council of either of the said Provinces of Upper & Lower Canada, and saving to His Majesty's Governor General or the Person upon whom that trust by His Majesty's appointment may devolve, power and authority from time to time by an instrument under the Great Seal to be created for the British Dominions in North America, to constitute, appoint and remove the Speaker of such Legislative Council.

*Blank in MS.

(3) And be it also enacted by the same Authority that such General Assembly may be composed of such persons as may be elected by the majority of the House of Assembly of the Province for which they serve to be manifested by Triplicate Instruments under the hand and seal of the Speaker thereof to the Governor General, the Speaker of the Legislative Council, and the Speaker of the General Assembly.

(4) And be it also enacted by the same authority that to give any Acts of the said Governor General, Legislative Council and General Assembly, the force and authority of a Law, the same shall have been assented to in the said Legislative Council by the majority of the voices forming a house of Council, according to His Majesty's appointment thereof, and shall have been assented to in the said General Assembly by such and so many Voices as will make it the Act of the majority of the Provinces, having right to be represented in the said General Assembly, and it shall be a house of General Assembly as often as there shall be assembled one or more members duly elected by each

of the Assemblies of the said Provinces or of the greater number of such provinces.

(5) And be it further enacted by the same authority that it shall be lawful for His Majesty, His Heirs and Successors to authorize and direct His Governor General for the time being or the Person upon whom that trust by His Majesty's Appointment may devolve, in His Majesty's name and by an instrument under the great seal of the British Dominions in North America to summon and call together such General Assemblies in such manner as His Majesty shall be pleased to signify and command by His Royal Instructions to such Governor General.

(6) And be it also enacted by the same authority that the Governor General under such instructions as he may have received from His Majesty may assemble the said Legislative Council and General Assembly where, and prorogue and dissolve them, when and as often as he shall judge it necessary, Provided always and be it enacted that they shall be called together one at least in every two years, and continue to have the rights of sitting seven years from the Teste or day of the process or summons for their election unless they shall be sooner dissolved by the Authority aforementioned. But no Member either of the said Legislative Council or General Assembly shall be permitted to sit or vote in the General Legislature untill he shall have taken such Oaths as hereinbefore directed to be taken by the Members of the Legislative Council and Assembly of Upper or Lower Canada, or not being an Inhabitant of either of the said Provinces last mentioned such other oaths and qualifications as are taken to become a Member of the Parliament of Great Britain as by His Majesty's Instructions shall be directed and required.

(7) And be it also enacted by the same Authority that whenever any Bill which has been passed by the said Legislative Council and by the said General Assembly shall be presented for His Majesty's Assent to the Governor General for the time being or the Person exercising that trust under His Majesty's Authority, it shall and may be lawful for such Governor General or other person exercising the said trust, at his discretion, subject nevertheless to such Instructions as he may from time to time receive from His Majesty His Heirs and Successors, either to declare His Majesty's Assent to such Bill, or to declare that he withholds such assent, or that he reserves the said bill untill His Majesty's Pleasures shall be signified thereon. And no Bill so to be presented and not assented to in manner aforesaid shall have the force of a Law.

(8) And be it further Enacted by the same Authority that nothing in this Act contained shall be construed to prevent His

Majesty from appointing, erecting, and constituting such general and executive Council and Councils as he may judge proper for the said Provinces and Dominions in general, and any other Office, in His Royal Judgment and discretion requisite for the said general Government ; or from nominating and appointing thereto from time to time, such persons as he shall think fit to compose the same Executive Council, or to execute such offices or from removing therefrom any person or Persons whom he may think fit to remove.

(9) And be it also Enacted by the same Authority that it shall and may be lawful for His Majesty to give Authority to his said Governor General, or the person exercising that trust, on his arrival in either of the provinces within his commission, to assume the authority and to perform all the duties and functions which the Lieutenant Governor thereof, might exercise and perform ; and the powers and authority of such Lieutenant Governor shall be suspended & so continue during the time of the Governor General's being within the same province ; and that it shall also be lawful for His Majesty to give to the said Governor General for the time being, tho' absent in some other province of His General Government, authority respecting any act of any of the Provinces of such nature and tendency as His Majesty may see cause by His Royal Instruction to describe, to suspend the execution of such Act until His Majesty's Pleasure shall be signified respecting the same ; to which end it shall be the duty of the person administering the Government in every Province subject to the Governor General's Authority, to transmit to him a copy of every bill to which he has assented as soon as possible after the enacting of the same into a law ; and shall upon the suspension thereof by the Governor General immediately cause the same to be made known by proclamation under the great seal of his Province, in the manner most effectual for making the same universally known to the Inhabitants of the same Province, and all others whom the same may concern.

(10) And be it further enacted by the Authority aforesaid, that nothing in this Act contained shall be interpreted to derogate from the rights and Prerogatives of the Crown for the due exercise of the Royal and executive authority over all or any of the said Provinces ; or to derogate from the Legislative Sovereignty and Supremacy of the Crown and Parliament of Great Britain ; but the Acts of Legislation of either of the said Provinces, as well as the Acts of the Governor General and the Legislative Council and General Assembly so to be made, shall be subject to the Royal dis-allowance as exercised heretofore respecting the laws of any of the British Provinces, and the said Dominions and all

the Provinces into which they may be hereafter divided shall continue and remain to be governed by the Crown and Parliament of Great Britain as the supreme Legislature of the whole British Empire. D.

Endorsed D.
In Lord Dorchesters to Mr. Grenville N° 15
of 8th February 1790.

## CLAUSE *RE* TRIAL OF CRIMINAL OFFENCES.[1]

And whereas it may so happen that Offences may be committed, which as the Law now stands, may be only triable and punishable in England by virtue of divers Statutes, as Treason or Murder perpetrated in foreign parts, and yet the Offender may be taken and imprisoned for such offence, in one or other of His Majesty's Provinces in America.

Be it therefore enacted by the Authority aforesaid that such offender may be tried and punished, in such of His Majesty's Provinces where he may happen to be imprisoned, and for that purpose may be proceeded against before Commissioners of Oyer and Terminer constituted from time to time under the Great Seal of the Province, as nearly as may be according to the Course in the realm of England for the Trial of Offences of the like nature. D.

Endorsed. E.
In Lord Dorchester's to Mr. Grenville N° 15
of 8th February 1790.

## GRENVILLE TO DORCHESTER.[2]

N° 25. Whitehall 5th June 1790.

The Right Honorable
Lord Dorchester

My Lord,

Your Lordship's dispatch[3] N° 15 was not received here till the 18th of April. The Session of Parliament was then so far advanced that it was not thought proper to bring forward at that time the proposed bill for regulating the Government of Quebec, especially as several of the observations stated by Your Lordship on the subject were of a nature to require previous consideration, and as it then appeared probable that I might

[1] This is clause E, (Q 44-1, p. 77) drawn up by Chief Justice Smith, and referred to in Dorchester to Grenville p. 1005, as also in Smith to Dorchester, p. 1018.
[2] Canadian Archives, Q. 44-1, p. 152. To follow the discussion of the various sections of the bill requires a reference to the first and second draughts of it. See pp. 992 and 1006.
[3] The dispatch of Feb. 8th, enclosing, among other papers, the second draught of the Constitutional Bill. See p. 1002.

receive from Your Lordship any further suggestions which might occur on a fuller examination of the plan and that I might perhaps be able to avail myself of Your Lordship's personal assistance in the course of the summer.

The discussions which have arisen with Spain[1] having induced His Majesty to direct me to state to Your Lordship the necessity of your continuing for the present in Quebec, and it being uncertain whether even in the Supposition of an amicable adjustment of that business, it could be terminated soon enough to allow of my transmitting to Your Lordship this season His Majesty's permission to return to England, I have thought it right to state to Your Lordship in this manner some particulars which have occurred to me on the subject of Your Lordship's dispatch abovementioned and its inclosures.

There will certainly be considerable difficulty in any mode of describing the boundaries of Upper Canada 'till some precise adjustment is made with the United States, relative to those points in which the Treaty of 1783 has not been carried into execution by the contracting parties. This subject is now under the consideration of Government, and it is not improbable that some person may be sent from this Country with powers to settle those points. But if such settlement shall not have taken place previous to the time of bringing forward the Quebec bill in the next Session of Parliament, I am inclined to believe the most adviseable mode of avoiding the difficulty in question will be that of leaving the Boundaries to be fixed by His Majesty.

This would enable the King to provide for the point to which the clause B[2] inclosed in Your Lordship's dispatch relates—If any other mode should be adopted the object of that clause will be attended to.

No material objection occurs to me to the numbers proposed by Your Lordship for the first formation of the Legislative Councils or Houses of Assembly in the two Provinces, especially as I must necessarily rely so much upon Your Lordship's judgment in that respect—If I were to wish any alteration it might perhaps be to lessen the numbers of which the Legislative Councils are to consist in the first instance—and this with a view to having the means of greater selection with respect to the persons to be first named, on the characters and conduct of whom so much depends. The mode suggested, for ascertaining the circles, or districts for elections appears unobjectionable.

More difficulty seems to occur with respect to the proposed extension of the qualification of Eligibility to persons born under the dominion of foreign princes, and not within those provinces which have been conquered by His Majesty's arms. The naturalization bills in Great Britain always

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[1] The difficulty with Spain arose over the capture of certain British vessels at Nootka Sound, on the north west coast of America. It was feared for a time that war would be the result, with the possibility of the United States being drawn into it at the instance of Spain, owing to the difficulties about the western posts, &c.

[2] The clause drawn up by the Chief Justice relative to the boundaries between Quebec and New Brunswick. See p. 1017.

contain a clause of exclusion from Seats in either House of Parliament, and there seems to be great objection to giving any similar right by provincial naturalization. Unless therefore I should hear from Your Lordship that there are any persons whom in Your Lordship's opinion it would in the present moment be particularly desirable not to exclude and who would not fall under the description of Eligibility as it before stood I incline to think it should not be altered.

Some doubt occurs to me whether it would be desirable to extend the disqualifying clauses in the manner proposed by Your Lordship. It is true unquestionably that persons of the descriptions mentioned are not entitled to political honours or consequence, but the means of discouraging them within the province seems to be a consideration rather of local provincial regulation, and not naturally to form a part of a law on which the Constitution of the Province is to be grounded.

After much enquiry and consideration, and after receiving the opinions of professional men upon the subject it does not appear to me to be practicable to introduce into the proposed bill any considerable or material articles of Commercial Law, and the insertion of those of smaller importance would not be desireable. Unless therefore I should receive any further suggestion on that subject from Your Lordship, it is my present intention not to add to the bill any clause ofthat nature, although I cannot but confess that I have taken this resolution with considerable reluctance, and apprehension of the possible effect which it may have on the British Commerce.

The difficulties of which the Merchants have complained with respect to the Commercial Laws of Canada and which certainly by no means appear to me to have been entirely unfounded, though in some instances, I think they have been exagerated, seem nevertheless rather to have arisen from the uncertainty of those Laws than from the positive defects of any one particular system. That uncertainty might perhaps be removed immediately by provisions to be adopted by the local Legislature of the Province, and it must ultimately be done away by an uniform and consistent administration of Justice which it will be the duty of His Majesty's Ministers to secure to the King's subjects by such means as will under the proposed system be left in His Majesty's discretion. I am not quite satisfied that this will be fully sufficient to obviate the objection drawn from the prejudices of those persons of whom the Legislature of Lower Canada must in great measure be composed, and from the natural operation of those prejudices in questions of Commercial Laws. But the difficulty appears to me unavoidable and not to be of sufficient weight to prevent the adoption of the proposed system if right in other respects.

It is certainly very desireable that the benefits of an exchange from tenure in fief to common Socage should not be confined to the persons holding immediately of the King but should be extended to their undertenants. But it seems necessary that some mode of compensation should be settled by which the person holding of the King might receive an adequate

return for the value of the rights which he would lose by such conversion, unless it is understood that the benefit derived to the tenant in capite from the extinguishing the feudal rights of the King, would in all cases be greater than the loss incident to him upon the surrender of his rights over his under-tenants. This as far as I understand the present system of tenures in Canada, I imagine would not be the case, and it would therefore be necessary to make some provision for this difficulty.

Whether it is possible to establish any general rule or fixed proportion of compensation to be made by the under-tenant to his Lord in lieu of the feudal services and payments to which he is now subject, or whether it would be necessary in each distinct case to have recourse to some mode of appraisement or valuation, and what mode could be best adapted for that purpose, I am not sufficiently informed to decide, and I must therefore request that Your Lordship will with the assistance of His Majesty's Chief Justice, and any other Persons whom you may think competent to advise you upon it, give a particular attention to this point : and transmit to me such a clause as shall be judged effectual for the object which I have mentioned. In framing such a clause attention will of course be paid by the persons drawing it to the nature and operation of the different clauses in the Stat : 12 Car. 2 Cap. 24, by which Socage holding was made general in this Kingdom. If any compensation is to be paid by the under-tenant to his Lord on such Conversions, it seems necessary to provide that the Conversions shall not take place but by mutual consent.

Proper attention will be paid to Your Lordship's suggestions with respect to the Commencement of the Bill, but the intermediate establishment of a separate Government in Upper Canada according to the form of that created by the present Quebec Act does not appear adviseable.

The formation of a general Legislative Government for all the King's Provinces in America,[1] is a point which has been under Consideration, but I think it liable to considerable objection—The principle of uniting the executive Government, has already been acted upon, and is one which I think of material importance to the British Interests in America.

The other Clauses suggested by the Chief Justice will be considered by His Majesty's Law Servants.

I am &c &c.
W. W. Grenville

[1] Referring to the proposed clause on that subject submitted by the Chief Justice. See p. 1020.

## DUNDAS TO DORCHESTER.[1]

(No. 2)

Whitehall, 16th September 1791.

The Right Honble
Lord Dorchester
My Lord,

In the letters which were written to your Lordship by my Predecessor, Lord Grenville, I find you were long ago fully informed by his Lordship of His Majesty's intention of dividing His Province of Quebec into two separate Governments, to be called the Province of Upper Canada, and the Province of Lower Canada, and of Regulations which were proposed to be made in consequence, for the better Government of that part of His Majesty's Dominions. In pursuance of that intention I am now to inform your Lordship that a Bill was introduced into Parliament and passed during the last session, intituled "An Act to repeal certain parts of an Act passed in the Fourteenth year of His Majesty's Reign intituled "An Act for making more effectual Provision for the Government of the Province of Quebec in North America; and to make further provision for the Government of the said Province," a Copy of which I inclose together with a Commission under the Great Seal, revoking your former Commission of Governor of the Province of Quebec, and vesting you with the Chief Government of the two Provinces beforementioned and also Instructions under the Royal Sign Manual applicable to the Regulations which His Majesty under the Act, has thought fit to establish.

In framing the Instructions to Your Lordship with respect to the Quorums of the Legislative Councillors and of the Members of the Assembly for Lower Canada, some difficulties occurred in fixing on the number which might be proper to compose such Quorums, and on a consideration of the subject, it was rather thought adviseable that the number of which such Quorums should consist, should be left to those Bodies to determine. The mode which His Majesty's Servants recommend for adjusting this point, is either by an Act of the Legislature, or what may perhaps equally answer the purpose, that of making the regulation now to be fixed upon, a standing order of each of the two Houses respectively, and I have it in Command to desire that your Lordship will on the first meeting, recommend this object to their consideration, and likewise the forming other such Rules or standing Orders for regulating the Form of proceeding in the Council & Assembly, respectively, as may be most conducive to the regular dispatch of Business.

Your Lordship will find on a perusal of the Act that the number of Representatives of which the Assembly of Lower Canada was originally intended to consist has been considerably increased. This measure will

[1] Canadian Archives, Q. 52, p. 213. Henry Dundas was a noted politician of the period, who had boxed the compass among the political parties of the time and finally attached himself to Pitt, with whom he gained special favour. After filling several important offices, he became Secretary of State for the Home Department, on June 8th, 1791. In 1802 he was raised to the peerage as Viscount Melville and Baron Dunira.

render a new Distribution necessary instead of that which was proposed by Your Lordship in your letter to Lord Grenville[1] No. 15, and I wish Your Lordship particularly to consider whether for the sake of convenience and dispatch in deciding upon Elections and preventing the inconvenience of too great a number of Electors, the Towns of Quebec and Montreal might not for that purpose be divided into two separate and distinct Districts, and that these Towns should return Four Members each, by electing Two in each District. Your Lordship will see by the Copy of a Paper delivered to me by Mr Lymburner,[2] that he proposes that each of the Towns of Quebec and Montreal should chuse seven Members each, but that arrangement His Majesty's Servants entirely disapprove of, and would be sorry that such a distribution should on any account take place.

When your Lordship shall have considered this subject maturely, and have arranged your Plan for the Representatives to be chosen by each of the Towns and Circles respectively, you will as soon as conveniently may be issue your Proclamation accordingly.

According to the best opinions which I can obtain it seems to me adviseable that excepting in the instances of Trois Rivieres St. John & William Henry, each of the other Circles and Towns or Townships in Lower Canada should elect one Representative, and as the Extent of the several Towns from the introduction of new Settlers and from the probable increase of Population will hereafter be likely to be enlarged, it seems to be desireable that for the same purpose of preventing too great a number of Electors for any place, that limits should now be fixed within which the Electors for the Representatives of the Towns should be resident, and whenever the number of new Inhabitants resident within the limits adjacent and possessed of qualifications to vote for Towns or Townships shall encrease so as to render it expedient that they should be represented in the House of Assembly, a new Town or Township shall in like manner be established within fixed limits for the purpose of separately electing an additional Representative in the House of Assembly, and so on from time to time as often as the occasion may require.

Your Lordship has I have no doubt been informed of the disputes & disagreements which have at times taken place between the Councils & Assemblies of the different Colonies respecting the Right claimed by the latter that all Bills whatsoever for granting Money should originate with them. The principle itself as far as it relates to any question of imposing burthens upon the Subject is so consistent with the Spirit of Our Constitution that it ought not to be resisted at the same time it would be prudent, if possible, to avoid any unnecessary discussion of its application in minute cases, & above all that it should not be so extended by overstrained refinements as to produce embarrassment & perplexity in the progress of Public business.

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[1] See p. 1003.
[2] The paper mentioned accompanies this despatch, and is given in Q 52, p. 219.

As there does not at present appear to be sufficient provision for the support of the Protestant Clergy either in Upper Canada or in Lower Canada, the collection of Tythes has under the Act of the present year been suffered to continue; But your Lordship will understand that it is not wished to continue this burthen longer than is necessary for the competent provision of the Clergy[1]: If therefore the Proprietors of Lands liable to the payment of Tythes shall be induced to concur with your Lordships recommendation in providing a sufficient fund for clearing the reserved Lands and for building Parsonage Houses on the several Parsonages which may be endowed under the Act of the last Session of Parliament, and at the same time provide an intermediate fund for the maintenance of the Clergy during the period that will be required for the purpose of so clearing these reserved Lands, the obligation of Tythes may then cease. I have thought it necessary to explain this subject minutely to your Lordship, that by making it understood among the Proprietors of these Lands they may perceive the means which are in their own power to relieve themselves from a burthen which is naturally irksome to them.

By the Act of the last Session the duties payable to His Majesty under the Act of the 14th year of His Majesty's Reign, Cap. 88,[2] on Articles imported into the Province of Quebec are suffered to remain upon their former footing ; but I have it in Command to intimate to Your Lordship that as soon as the Legislatures of the Provinces of Upper Canada & Lower Canada shall have passed Laws laying the same or other Duties to an equal amount to those which become payable under the Acts, & such Act shall have obtained the Royal Assent, His Majesty's Ministers will be ready to propose to Parliament a Repeal of the Act abovementioned.

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[1] The following extracts from a letter from the Society for the Propagation of the Gospel, addressed to Lord Sydney, will indicate the influences at work to secure from the Government an adequate provision for the Protestant religion. "The Society for Propagation of the Gospel in foreign parts, having under their consideration the state of their missions in North America, and of the church of England, in such parts of it as remain under the dominion of His Majesty, are anxious to be informed what steps have been taken by Government since the last peace, towards forming a church establishment therein, and making a permanent provision for its ministers. They have learned with much satisfaction from the communication Your Lordship was pleased to make to them, that instructions have been given to the Governor of New Brunswick, to appropriate tracts of lands in the parishes to be laid out in that province, for glebes for the ministers to be appointed to such parishes, and other smaller tracts for schoolmasters, and that a salary of 75l. per annum is intended to be allowed in the estimate to be granted by Parliament to each of four ministers of the church of England within that province; * * * * The Society also understand that similar instructions have been given to the Governors of Quebec and Nova Scotia, to appropriate tracts of lands for glebes, and smaller portions for schoolmasters, in all the districts laid out for the accommodation of the Loyalists in those provinces, and they request to be informed how far the Governors have complied with these instructions; in what places the emigrants are seated; whether they have carried any clergy of the church of England with them; whether any assignments have been made for the subsistence of such clergymen, upon the revenue of Quebec, or upon the quit rents of Nova Scotia, or any other fund appropriated for the erection of churches and parsonage houses?" Given in Knox's "Extra Official State Papers," &c. Vol. I, Appendix No. IV.

[2] The Quebec Revenue Act, see p. 576.

SESSIONAL PAPER No. 18

# THE CONSTITUTIONAL ACT OF 1791.[2]

Anno Tricesimo Primo

GEORGII III. REGIS.

CAP. XXXI.

An Act to repeal certain Parts of an Act, passed in the Fourteenth Year of His Majesty's Reign, intituled, *An Act for making more effectual Provision for the Government of the Province of* Quebec, *in* North America ; and to make further Provision for the Government of the said Province.

Preamble.

Whereas an Act was passed in the Fourteenth Year of the Reign of His present Majesty, intituled, *An Act for making more effectual Provision for the Government of the Province of* Quebec *in* North America : And whereas the said Act is in many Respects inapplicable to the present Condition and Circumstances of the said Province : And whereas it is expedient and necessary that further Provision should now be made for the good Government and Prosperity thereof : May it therefore please Your most Excellent Majesty that it may be enacted ; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,

14 *Geo.* III, Cap. 83, recited.

So much of recited Act as relates to the Appointment of a Council for *Quebec*, or its Powers, repealed.

That so much of the said Act as in any Manner relates to the Appointment of a Council for the Affairs of the said Province of *Quebec*, or to the Power given by the said Act to the said Council, or to the major Part of them, to make Ordinances for the Peace, Welfare, and good Government of the said Province, with the Consent of His Majesty's Governor, Lieutenant Governor or Commander in Chief for the Time being, shall be, and the same is hereby repealed.

II. And whereas His Majesty has been pleased to signify, by His Message to both Houses of Parliament, His Royal Intention to divide His Province of *Quebec* into Two separate Provinces, to be called *The Province of Upper Canada*, and *The Province of Lower Canada* ; be it enacted by the Authority

[2] The text of this Act, like that of the Quebec Act, is taken from the original folio issue of the Act by the King's Printer.

The debates in the British Parliament in connection with the passing of this Act will be found in Hansard, vol. 28, pp. 504, 626 and 1376, and in vol. 29, pp. 104, 359, 655.

A very full report of the debates on the bill, during the session of 1790-1791, will also be found in "The History and Proceedings of the Lords and Commons during the first Session of the seventeenth Parliament of Great Britain." London, 1791, pp. 438 and 497.

Within each of the intended Provinces a Legislative Council and Assembly to be constituted, by whose Advice His Majesty may make Laws for the Government of the Province

aforesaid, That there shall be within each of the said Provinces respectively a Legislative Council, and an Assembly, to be severally composed and constituted in the Manner herein-after described ; and that in each of the said Provinces respectively His Majesty, His Heirs or Successors, shall have Power, during the Continuance of this Act, by and with the Advice and Consent of the Legislative Council and Assembly of such Provinces respectively, to make Laws for the Peace, Welfare, and good Government thereof, such Laws not being repugnant to this Act ; and that all such Laws, being passed by the Legislative Council and Assembly of either of the said Provinces respectively, and assented to by His Majesty, His Heirs or Successors, or assented to in His Majesty's Name, by such Person as His Majesty, His Heirs or Successors, shall from Time to Time appoint to be the Governor, or Lieutenant Governor, of such Province, or by such Person as His Majesty, His Heirs or Successors, shall from Time to Time appoint to administer the Government within the same, shall be, and the same are hereby declared to be, by virtue of and under the Authority of this Act, valid and binding to all Intents and Purposes whatever, within the Province in which the same shall have been so passed.

His Majesty may authorize the Governor, or Lieutenant Governor, of each Province, to summon Members to the Legislative Council.

III. And be it further enacted by the Authority aforesaid, that for the Purpose of constituting such Legislative Council as aforesaid in each of the said Provinces respectively, it shall and may be lawful for His Majesty, His Heirs or Successors, by an Instrument under His or their Sign Manual, to authorize and direct the Governor or Lieutenant Governor, or Person administering the Government in each of the said Provinces respectively, within the Time herein-after mentioned, in His Majesty's Name, and by an Instrument under the Great Seal of such Province, to summon to the said Legislative Council, to be established in each of the said Provinces respectively, a sufficient Number of discreet and proper Persons, being not fewer than Seven to the Legislative Council for the Province of *Upper Canada*, and not fewer than Fifteen to the Legislative Council for the Province of *Lower Canada* ; and that it shall also be lawful for His Majesty, His Heirs or Successors, from Time to Time, by an Instrument under His or their Sign Manual, to authorize and direct the Governor or Lieutenant Governor, or Person administering the Government in each of the said Provinces respectively, to summon to the Legislative Council of such Province, in like Manner, such other Person or Persons as His Majesty, His Heirs or Successors, shall think fit ; and that every Person who shall be so summoned to the Legislative Council of either of the said Provinces respectively, shall thereby

become a Member of such Legislative Council to which he shall have been so summoned.

No Person under 21 Years of Age, *etc.* to be summoned.

IV. Provided always, and be it enacted by the Authority aforesaid, That no Person shall be summoned to the said Legislative Council, in either of the said Provinces, who shall not be of the full Age of Twenty-one Years, and a natural-born Subject of His Majesty, or a Subject of His Majesty naturalized by Act of the *British* Parliament, or a Subject of His Majesty, having become such by the Conquest and Cession of the Province of *Canada*.

Members to hold their Seats for Life.

V. And be it further enacted by the Authority aforesaid, That every Member of each of the said Legislative Councils shall hold his Seat therein for the Term of his Life, but subject nevertheless to the Provisions hereinafter contained for vacating the same, in the Cases herein-after specified.

His Majesty may annex to Hereditary Titles of Honour, the Right of being summoned to the Legislative Council.

VI. And be it further enacted by the Authority aforesaid, That whenever His Majesty, His Heirs or Successors, shall think proper to confer upon any Subject of the Crown of *Great Britain*, by Letters Patent under the Great Seal of either of the said Provinces, any Hereditary Title of Honour, Rank, or Dignity of such Province, descendible according to any Course of Descent limited in such Letters Patent, it shall and may be lawful for His Majesty, His Heirs or Successors, to annex thereto, by the said Letters Patent, if His Majesty, His Heirs or Successors, shall so think fit, an Hereditary Right of being summoned to the Legislative Council of such Province, descendible according to the Course of Descent so limited with respect to such Title, Rank, or Dignity ; and that every Person on whom such Right shall be so conferred or to whom such Right shall severally so descend, shall thereupon be entitled to demand from the Governor, Lieutenant Governor, or Person administering the Government of such Province, his Writ of Summons to such Legislative Council, at any Time after he shall have attained the Age of Twenty-one Years, subject nevertheless to the Provisions hereinafter contained.

Such descendible Right forfeited, and

VII. Provided always, and be it further enacted by the Authority aforesaid, That when and so often as any Person to whom such Hereditary Right shall have descended shall, without the Permission of His Majesty, His Heirs or Successors signified to the Legislative Council of the Province by the Governor, Lieutenant Governor, or Person administering the Government there, have been absent from the said Province for the Space of Four Years continually, at any Time between the Date of his succeeding to such Right and the Time of his applying for such Writ of Summons, if he shall have been of the Age of Twenty-

one Years or upwards at the Time of his so succeeding, or at any Time between the Date of his attaining the said Age and the Time of his so applying, if he shall not have been of the said Age at the Time of his so succeeding ; and also when and so often as any such Person shall at any Time, before his applying for such Writ of Summons, have taken any Oath of Allegiance or Obedience to any Foreign Prince or Power, in every such Case such Person shall not be entitled to receive any Writ of Summons to the Legislative Council by virtue of such Hereditary Right, unless His Majesty, His Heirs or Successors, shall at any Time think fit, by Instrument under His or their Sign Manual, to direct that such Person shall be summoned to the said Council ; and the Governor, Lieutenant Governor, or Person administering the Government in the said Provinces respectively, is hereby authorized and required, previous to granting such Writ of Summons to any Person so applying for the same, to interrogate such Person upon Oath touching the said several Particulars, before such executive Council as shall have been appointed by His Majesty, His Heirs or Successors, within such Province, for the Affairs thereof.

Seats in Council vacated in certain Cases.

VIII. Provided also, and be it further enacted by the Authority aforesaid, That if any Member of the Legislative Councils of either of the said Provinces respectively shall leave such Province, and shall reside out of the same for the Space of Four Years continually, without the Permission of His Majesty, His Heirs or Successors, signified to such Legislative Council by the Governor or Lieutenant Governor, or Person administering His Majesty's Government there, or for the Space of Two Years continually, without the like Permission, or the Permission of the Governor, Lieutenant Governor, or Person administering the Government of such Province, signified to such Legislative Council in the Manner aforesaid ; or if any such Member shall take any Oath of Allegiance or Obedience to any Foreign Prince or Power ; his Seat in such Council shall thereby become vacant.

Hereditary Rights and Seats so forfeited or vacated, to remain suspended during the Lives of the Parties, but on their Deaths to go to the Persons next intitled thereto.

IX. Provided also, and be it further enacted by the Authority aforesaid, That in every Case where a Writ of Summons to such Legislative Council shall have been lawfully withheld from any Person to whom such Hereditary Right as aforesaid shall have descended, by Reason of such Absence from the Province as aforesaid, or of his having taken an Oath of Allegiance or Obedience to any Foreign Prince or Power, and also in every Case where the Seat in such Council of any Member thereof, having such Hereditary Right as aforesaid, shall have been vacated by Reason of any of the Causes herein-before specified, such Hereditary Right shall remain suspended during the Life

of such Person, unless His Majesty, His Heirs or Successors, shall afterwards think fit to direct that he be summoned to such Council ; but that on the Death of such Person such Right, subject to the Provisions herein contained, shall descend to the Person who shall next be entitled thereto, according to the Course of Descent limited in the Letters Patent by which the same shall have been originally conferred.

Seats in Council forfeited, and Hereditary Rights extinguished, for Treason.

X. Provided also, and be it further enacted by the Authority aforesaid, That if any Member of either of the said Legislative Councils shall be attainted for Treason in any Court of Law within any of His Majesty's Dominions, his Seat in such Council shall thereby become vacant, and any such Hereditary Right as aforesaid then vested in such Person, or to be derived to any other Persons through him, shall be utterly forfeited and extinguished.

Questions respecting the Right to be summoned to Council, &c. to be determined as herein mentioned.

XI. Provided also, and be it further enacted by the Authority aforesaid, That whenever any Question shall arise respecting the Right of any Person to be summoned to either of the said Legislative Councils respectively, or respecting the Vacancy of the Seat in such Legislative Council of any Person having been summoned thereto, every such Question shall, by the Governor or Lieutenant Governor of the Province, or by the Person administering the Government there, be referred to such Legislative Council, to be by the said Council heard and determined ; and that it shall and may be lawful either for the Person desiring such Writ of Summons, or respecting whose Seat such Question shall have arisen, or for His Majesty's Attorney General of such Province in His Majesty's Name, to appeal from the Determination of the said Council, in such Case, to His Majesty in His Parliament of *Great Britain* ; and that the Judgement thereon of His Majesty in his said Parliament shall be final and conclusive to all Intents and Purposes whatever.

The Governor of the Province may appoint and remove the Speaker.

XII. And be it further enacted by the Authority aforesaid, That the Governor or Lieutenant Governor of the said Provinces respectively, or the Person administering His Majesty's Government therein respectively, shall have Power and Authority from Time to Time, by an Instrument under the Great Seal of such Province, to constitute, appoint, and remove the Speakers of the Legislative Councils of such Provinces respectively.

His Majesty may authorize the Governor to call together the Assembly,

XIII. And be it further enacted by the Authority aforesaid, That, for the Purpose of constituting such Assembly as aforesaid, in each of the said Provinces respectively, it shall and may be lawful for His Majesty, His Heirs or Successors, by an Instrument under His or their Sign Manual, to authorize and direct the Governor or Lieutenant Governor, or Person administering the Government in each of the said Provinces respectively,

within the Time herein-after mentioned, and thereafter from Time to Time, as Occasion shall require, in His Majesty's Name, and by an Instrument under the Great Seal of such Province, to summon and call together an Assembly in and for such Province.

and, for the Purpose of electing the Members, to issue a Proclamation dividing the Province into Districts, &c.

XIV. And be it further enacted by the Authority aforesaid, That, for the Purpose of electing the Members of such Assemblies respectively, it shall and may be lawful for His Majesty, His Heirs or Successors, by an Instrument under His or their Sign Manual to authorize the Governor or Lieutenant Governor of each of the said Provinces respectively, or the Person administering the Government therein, within the Time hereinafter mentioned, to issue a Proclamation dividing such Province into Districts, or Counties, or Circles, and Towns or Townships, and appointing the Limits thereof, and declaring and appointing the Number of Representatives to be chosen by each of such Districts, or Counties, or Circles, and Towns or Townships respectively; and that it shall also be lawful for His Majesty, His Heirs or Successors, to authorize such Governor or Lieutenant Governor, or Person administering the Government, from Time to Time to nominate and appoint proper Persons to execute the Office of returning Officer in each of the said Districts, or Counties, or Circles, and Towns or Townships respectively ; and that such Division of the said Provinces into Districts, or Counties, or Circles, and Towns or Townships, and such Declaration and Appointment of the Number of Representatives to be chosen by each of the said Districts, or Counties, or Circles, and Towns or Townships respectively, and also such Nomination and Appointment of Returning Officers in the same, shall be valid and effectual to all the Purposes of this Act, unless it shall at any Time be otherwise provided by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors.

Power of the Governor to appoint Returning Officers, to continue Two Years from the Commencement of this Act.

XV. Provided nevertheless, and be it further enacted by the Authority aforesaid, That the Provision herein-before contained, for impowering the Governor, Lieutenant Governor, or Person administering the Government of the said Provinces respectively, under such Authority as aforesaid from His Majesty, His Heirs or Successors, from Time to Time, to nominate and appoint proper Persons to execute the Office of Returning Officer in the said District, Counties, Circles, and Towns or Townships, shall remain and continue in Force in each of the said Provinces respectively, for the Term of Two Years, from and after the Commencement of this Act, within such Province, and no longer ; but subject nevertheless to be sooner repealed or varied by any Act of the

Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors.

No Person obliged to serve as Returning Officer more than Once, unless otherwise provided by an Act of the Province.

XVI. Provided always, and be it further enacted by the Authority aforesaid, That no Person shall be obliged to execute the said Office of Returning Officer for any longer Time than One Year, or oftener than Once, unless it shall at any time be otherwise provided by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors.

Number of Members in each Province.

XVII. Provided also, and be it enacted by the Authority aforesaid, That whole Number of Members to be chosen in the Province of *Upper Canada* shall not be less than Sixteen, and that the whole Number of Members to be chosen in the Province of *Lower Canada* shall not be less than Fifty.

Regulations for issuing Writs for the Election of Members to serve in the Assemblies.

XVIII. And be it further enacted by the Authority aforesaid, That Writs for the Election of Members to serve in the said Assemblies respectively shall be issued by the Governor, Lieutenant Governor, or Person administering His Majesty's Government within the said Provinces respectively, within Fourteen Days after the sealing of such Instrument as aforesaid for summoning and calling together such Assembly, and that such Writs shall be directed to the respective Returning Officers of the said Districts, or Counties, or Circles, and Towns or Townships, and that such Writs shall be made returnable within Fifty Days at farthest from the Day on which they shall bear Date, unless it shall at any Time be otherwise provided by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors ; and that Writs shall in like Manner and Form be issued for the Election of Members in the Case of any Vacancy which shall happen by the Death of the Person chosen, or by his being summoned to the Legislative Council of either Province, and that such Writs shall be made returnable within Fifty Days at farthest from the Day on which they shall bear Date, unless it shall at any Time be otherwise provided by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors ; and that in the Case of any such Vacancy which shall happen by the Death of the Person chosen, or by Reason of his being so summoned as aforesaid, the Writ for the Election of a new Member shall be issued within Six Days after the same shall be made known to the proper Office for issuing such Writs of Election.

Returning Officers to execute Writs.

XIX. And be it further enacted by the Authority aforesaid, That all and every the Returning Officers so appointed as aforesaid, to whom any such Writs as aforesaid shall be directed, shall,

and they are hereby authorized and required duly to execute such Writs.

By whom the Members are to be chosen.

XX. And be it further enacted by the Authority aforesaid, That the Members for the several Districts, or Counties, or Circles of the said Provinces respectively, shall be chosen by the Majortiy of Votes of such Persons as shall severally be possessed, for their own use and Benefit, of Lands or Tenements within such District, or County, or Circle, as the Case shall be, such Lands being by them held in Freehold, or in Fief, or in Roture, or by Certificate derived under the Authority of the Governor and Council of the Province of *Quebec*, and being of the yearly Value of Forty Shillings Sterling, or upwards, over and above all Rents and Charges payable out of or in respect of the same ; and that the Members for the several Towns or Townships within the said Provinces respectively shall be chosen by the Majority of Votes of such Persons as either shall severally be possessed, for their own Use and Benefit, of a Dwelling House and Lot of Ground in such Town or Township, such Dwelling House and Lot of Ground being by them held in like Manner as aforesaid, and being of the yearly Value of Five Pounds Sterling, or upwards, or, as having been resident within the said Town or Township for the Space of Twelve Calendar Months next before the Date of the Writ of Summons for the Election, shall *bona fide* have paid One Year's Rent for the Dwelling House in which they shall have so resided, at the Rate of Ten Pounds Sterling *per Annum*, or upwards.

Certain Persons not eligible to the Assemblies.

XXI. Provided always, and be it further enacted by the Authority aforesaid, That no Person shall be capable of being elected a Member to serve in either of the said Assemblies, or of sitting or voting therein, who shall be a Member of either of the said Legislative Councils to be established as aforesaid in the said Two Provinces, or who shall be a Minister of the Church of *England*, or a Minister, Priest, Ecclesiastic, or Teacher, either according to the Rites of the Church of *Rome*, or under any other Form or Profession of Religious Faith or Worship.

No Person under 21 Years of Age, &c. capable of voting or being elected;

XXII. Provided also, and be it further enacted by the Authority aforesaid, That no Person shall be capable of voting at any Election of a Member to serve in such Assembly, in either of the said Provinces, or of being elected at any such Election, who shall not be of the full Age of Twenty-one Years, and a natural-born Subject of His Majesty, or a Subject of His Majesty naturalized by Act of the *British* Parliament, or a Subject of His Majesty, having become such by the Conquest and Cession of the Province of *Canada*.

nor any Person attainted for Treason or Felony.

XXIII. And be it also enacted by the Authority aforesaid That no Person shall be capable of voting at any Election of a Member to serve in such Assembly, in either of the said Provinces, or of being elected at any such Election who shall have been attainted for Treason or Felony in any Court of Law within any of His Majesty's Dominions, or who shall be within any Description of Persons disqualified by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors.

Voters, if required, to take the following

XXIV. Provided also, and be it further enacted by the Authority aforesaid, That every Voter, before he is admitted to give his Vote at any such Election, shall, if required by any of the Candidates, or by the Returning Officer, take the following Oath, which shall be administered in the *English or French* Language, as the Case may require :

Oath.

*I, A.B., do declare and testify, in the Presence of Almighty God That I am, to the best of my Knowledge and Belief, of the full Age of Twenty-one Years, and that I have not voted before at this Election.*

and to make Oath to the Particulars herein specified.

And that every such Person shall also, if so required as aforesaid, make Oath, previous to his being admitted to vote, that he is, to the best of his Knowledge and Belief, duly possessed of such Lands and Tenements, or of such a Dwelling House and Lot of Ground, or that he has *bona fide* been so resident, and paid such Rent for his Dwelling House, as entitles him, according to the Provisions of this Act, to give his Vote at such Election for the County, or District, or Circle, or for the Town or Township for which he shall offer the same.

His Majesty may authorize the Governor to fix the Time and Place of holding Elections,

XXV. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize the Governor or Lieutenant Governor, or Person administering the Government within each of the said Provinces respectively, to fix the Time and Place of holding such Elections, giving not less than Eight Days Notice of such Time, subject nevertheless to such Provisions as may hereafter be made in these Respects by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors.

and of holding the Sessions of the Council and Assembly, &c.

XXVI. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize the Governor or Lieutenant Governor of each of the said Provinces respectively, or the Person administering the Government therein, to fix the Places and Times of holding the First and every other Session of the Legislative Council and Assembly of such Province, giving

due and sufficient Notice thereof, and to prorogue the same from Time to Time and to dissolve the same, by Proclamation or otherwise, whenever he shall judge it necessary or expedient.

Council and Assembly to be called together, Once in 12 Months, &c.

XXVII. Provided always, and be it enacted by the Authority aforesaid, that the said Legislative Council and Assembly, in each of the said Provinces, shall be called together Once at least in every Twelve Calendar Months, and that every Assembly shall continue for Four Years from the Day of the Return of the Writs for chusing the same, and no longer, subject nevertheless to be sooner prorogued or dissolved by the Governor or Lieutenant Governor of the Province, or Person administering His Majesty's Government therein.

and all Questions therein to be decided by the Majority of Votes.

XXVIII. And be it further enacted by the Authority aforesaid, That all Questions which shall arise in the said Legislative Councils or Assemblies respectively shall be decided by the Majority of Voices of such Members as shall be present ; and that in all Cases where the Voices shall be equal, the Speaker of such Council or Assembly, as the Case shall be, shall have a casting Voice.

No Member to sit or vote till he has taken the following.

XXIX. Provided always, and be it enacted by the Authority aforesaid, that no Member, either of the Legislative Council or Assembly, in either of the said Provinces, shall be permitted to sit or to vote therein until he shall have taken and subscribed the following Oath, either before the Governor or Lieutenant Governor of such Province, or Person administering the Government therein, or before some Person or Persons authorized by the said Governor or Lieutenant Governor, or other Person as aforesaid, to administer such Oath, and that the same shall be administered in the *English* or *French* Language, as the Case shall require :

Oath.

*I, A.B., do sincerely promise and swear, That I will be faithful, and bear true Allegiance to His Majesty King George, as lawful Sovereign of the Kingdom of* Great Britain, *and of these Provinces dependant on and belonging to the said Kingdom ; and that I will defend Him to the utmost of my Power against all traiterous Conspiracies and Attempts whatever which shall be made against His Person, Crown and Dignity ; and that I will do my utmost Endeavour to disclose and make known to His Majesty, His Heirs or Successors, all Treasons and Traiterous Conspiracies and Attempts which I shall know to be against Him, or any of them : and all this I do swear without any Equivocation, mental Evasion, or secret Reservation, and renouncing all Pardons and Dispensations from any Person or Power whatever to the contrary.*

*So help me* GOD.

Governor may give or withhold His Majesty's Assent to Bills passed by the Legislative Council and Assembly, or reserve them for His Majesty's Pleasure.

XXX. And be it further enacted by the Authority aforesaid, That whenever any Bill which has been passed by the Legislative Council, and by the House of Assembly, in either of the said Provinces respectively, shall be presented, for His Majesty's Assent, to the Governor or Lieutenant Governor of such Province, or to the Person administering His Majesty's Government therein, such Governor or Lieutenant Governor, or Person administering the Government, shall, and he is hereby authorized and required to declare, according to his Discretion, but subject nevertheless to the Provisions contained in this Act, and to such Instructions as may from Time to Time be given in that Behalf by His Majesty, His Heirs or Successors, that he assents to such Bill in His Majesty's Name, or that he withholds His Majesty's Assent from such Bill, or that he reserves such Bill for the Signification of His Majesty's Pleasure thereon.

Governor to transmit to the Secretary of State Copies of such Bills as have been assented to, which His Majesty in Council may declare his Disallowance of within Two Years from the Receipt.

XXXI. Provided always, and be it further enacted by the Authority aforesaid, That whenever any Bill, which shall have been so presented for His Majesty's Assent to such Governor, Lieutenant Governor, or Person administering the Government, shall, by such Governor, Lieutenant Governor, or Person administering the Government, have been assented to in His Majesty's Name, such Governor, Lieutenant Governor, or Person as aforesaid, shall, and he is hereby required, by the first convenient Opportunity, to transmit to One of His Majesty's principal Secretaries of State an authentick Copy of such Bill so assented to ; and that it shall and may be lawful, at any Time within Two Years after such Bill shall have been so received by such Secretary of State, for His Majesty, His Heirs or Successors, by His or their Order in Council, to declare His or their Disallowance of such Bill, and that such Disallowance, together with a Certificate, under the Hand and Seal of such Secretary of State, testifying the Day on which such Bill was received as aforesaid, being signified by such Governor, Lieutenant Governor, or Person administering the Government, to the Legislative Council and Assembly of such Province, or by Proclamation, shall make void and annul the same, from and after the Date of such Signification.

Bills reserved for His Majesty's Pleasure not to have any Force till His Majesty's Assent be communicated to the Council and Assembly, &c.

XXXII. And be it further enacted by the Authority aforesaid, That no such Bill, which shall be so reserved for the Signification of His Majesty's Pleasure thereon, shall have any Force or Authority within either of the said Provinces respectively, until the Governor or Lieutenant Governor, or Person administering the Government, shall signify, either by Speech or Message, to the Legislative Council and Assembly of such Province, or by Proclamation, that such Bill has been laid before His Majesty

in Council, and that his Majesty has been pleased to assent to the same ; and that an Entry shall be made, in the Journals of the said Legislative Council, of every such Speech, Message, or Proclamation ; and a Duplicate thereof, duly attested, shall be delivered to the proper Officer, to be kept amongst the publick Records of the Province : And that no such Bill, which shall be so reserved as aforesaid, shall have any Force or Authority within either of the said Provinces respectively, unless His Majesty's Assent thereto shall have been so signified as aforesaid, within the Space of Two Years from the Day on which such Bill shall have been presented for His Majesty's Assent to the Governor, Lieutenant Governor, or Person administering the Government of such Province.

Laws in Force at the Commencement of this Act to continue so, except repealed or varied by it, &c.

XXXIII. And be it further enacted by the Authority aforesaid, That all Laws, Statutes, and Ordinances, which shall be in Force on the Day to be fixed in the Manner herein-after directed for the Commencement of this Act, within the said Provinces, or either of them, or in any Part thereof respectively, shall remain and continue to be of the same Force, Authority, and Effect, in each of the said Provinces respectively, as if this Act had not been made, and as if the said Province of *Quebec* had not been divided ; except in so far as the same are expressly repealed or varied by this Act, or in so far as the same shall or may hereafter, by virtue of and under the Authority of this Act, be repealed or varied by His Majesty, His Heirs or Successors, by and with the Advice and Consent of the Legislative Councils and Assemblies of the said Provinces respectively, or in so far as the same may be repealed or varied by such temporary Laws or Ordinances as may be made in the Manner herein-after specified.

Establishment of a Court of Civil Jurisdiction in each Province.

XXXIV. And whereas by an Ordinance passed in the Province of *Quebec*, the Governor and Council of the said Province were constituted a Court of Civil Jurisdiction, for hearing and determining Appeals in certain Cases therein specified,[1] be it further enacted by the Authority aforesaid, That the Governor, or Lieutenant Governor, or Person administering the Government of each of the said Provinces respectively, together with such executive Council as shall be appointed by His Majesty for the Affairs of such Province shall be a Court of Civil Jurisdiction within each of the said Provinces respectively, for hearing and determining Appeals within the same, in the like Cases, and in the like Manner and Form, and subject to such Appeal therefrom, as such Appeals might before the passing of this Act have

[1] See "Ordinance for establishing Courts of Civil Judicature in the Province of Quebec." 1777; articles 4 and 5, p. 680.

been heard and determined by the Governor and Council of the Province of *Quebec*; but subject nevertheless to such further or other Provisions as may be made in this Behalf, by Any act of the Legislative Council and Assembly of either of the said Provinces respectively, assented to by His Majesty, His Heirs or Successors.

14 *Geo.* III, Cap. 83, and

XXXV. And whereas, by the above-mentioned Act, passed in the Fourteenth Year of the Reign of His present Majesty, it was declared, That the Clergy of the Church of *Rome*, in the Province of *Quebec*, might hold, receive, and enjoy their accustomed Dues and Rights, with respect to such Persons only as should profess the said Religion ; provided nevertheless, that it should be lawful for His Majesty, His Heirs or Successors, to make such Provision out of the rest of the said accustomed Dues and Rights, for the Encouragement of the Protestant Religion, and for the Maintenance and Support of a Protestant Clergy within the said Province, as he or they should from Time to Time think necessary and expedient :[1] And whereas by His

Instructions of *Jan.* 3, 1775, to Sir *Guy Carleton*, &c. and

Majesty's Royal Instructions, given under His Majesty's Royal Sign Manual on the Third Day of *January*, in the Year of our Lord One thousand seven hundred and seventy-five, to *Guy Carleton* Esquire, now Lord *Dorchester*, at that Time His Majesty's Captain General and Governor in Chief in and over His His Majesty's Province of *Quebec*, His Majesty was pleased, among other Things to direct, "That no Incumbent professing "the Religion of the Church of *Rome*, appointed to any Parish "in the said Province, should be entitled to receive any Tythes "for Lands or Possessions occupied by a Protestant, but that "such Tythes should be received by such Persons as the said "*Guy Carleton* Esquire, His Majesty's Captain General and "Governor in Chief in and over His Majesty's said Province "of *Quebec*, should appoint, and should be reserved in the Hands "of His Majesty's Receiver General of the said Province, for the "Support of a Protestant Clergy in His Majesty's said Province, "to be actually resident within the same, and not otherwise, "according to such Directions as the said *Guy Carleton* Esquire, "His Majesty's Captain General and Governor in Chief in and "over His Majesty's said Province, should receive from His "Majesty in that Behalf ; and that in like Manner all growing "Rents and Profits of a vacant Benefice should, during such "Vacancy, be reserved for and applied to the like Uses :"[2] And whereas His Majesty's Pleasure has likewise been signified to

[1] See Quebec Act, p. 570.

[2] See Instructions to Governor Carleton, 1775, art. 21, sec. 5, p. 603.

Instructions to Sir *Frederick Haldimand*, and to Lord *Dorchester*, recited;

the same Effect in His Majesty's Royal Instructions, given in like Manner to Sir *Frederick Haldimand* Knight of the Most Honourable Order of the Bath, late His Majesty's Captain General and Governor in Chief in and over His Majesty's said Province of *Quebec* ;[1] and also in His Majesty's Royal Instructions, given in like Manner to the said Right Honourable *Guy* Lord *Dorchester*, now His Majesty's Captain General and Governor in Chief in and over His Majesty's said Province of *Quebec*;[2]

and the Declaration and Provisions therein respecting the Clergy of the Church of *Rome* to continue in force.

be it enacted by the Authority aforesaid, That the said Declaration and Provision contained in the said above-mentioned Act, and also the said Provision so made by His Majesty in consequence thereof, by His Instructions above recited, shall remain and continue to be of full Force and Effect in each of the said Two Provinces of *Upper Canada* and *Lower Canada* respectively, except in so far as the said Declaration or Provisions respectively, or any Part thereof, shall be expressly varied or repealed by any Act or Acts which may be passed by the Legislative Council and Assembly of the said Provinces respectively, and assented to by His Majesty, His Heirs or Successors, under the Restriction herein-after provided.

His Majesty's Message to Parliament recited.

XXXVI. And whereas His Majesty has been graciously pleased, by Message to both Houses of Parliament,[3] to express His Royal Desire to be enabled to make a permanent Appropriation of Lands in the said Provinces, for the Support and Maintenance of a Protestant Clergy within the same, in Proportion to such Lands as have been already granted within the same by His Majesty : And whereas His Majesty has been graciously pleased, by His said Message, further to signify His Royal Desire that such Provision may be made, with respect to all future Grants of Land within the said Provinces respectively, as may best conduce to the due and sufficient Support and Maintenance of a Protestant Clergy within the said Provinces, in Proportion to such Increase as may happen in the Population and Cultivation thereof : Therefore, for the Purpose of more effectually fulfilling His Majesty's gracious Intentions as aforesaid, and of providing for the due Execution of the same in all Time to come

His Majesty may authorize the Governor to make Allotments of Lands for the Support

be it enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize the Governor or Lieutenant Governor of each of the said Provinces respectively, or the Person administering the Government therein, to make, from and out of the Lands of the Crown

[1] Haldimand received in 1778 the same Instructions as those given to Carleton in 1775. See p. 697.

[2] See Instructions to Lord Dorchester, 1786, art. 21, sec. 5, p. 823.

[3] See the King's message to Parliament respecting Quebec; Feb. 25, 1791. Hansard, vol. 28, p. 1271. The second part of the message relates to the establishing of the Clergy Reserves.

of a Protestant Clergy in each Province:

within such Provinces, such Allotment and Appropriation of Lands, for the Support and Maintenance of a Protestant Clergy within the same, as may bear a due Proportion to the Amount of such Lands within the same as have at any Time been granted by or under the Authority of His Majesty : And that whenever any Grant of Lands within either of the said Provinces shall hereafter be made, by or under the Authority of His Majesty, His Heirs or Successors, there shall at the same Time be made, in respect of the same, a proportionable Allotment and Appropriation of Lands for the above-mentioned Purpose, within the Township or Parish to which such Lands so to be granted shall appertain or be annexed, or as nearly adjacent thereto as Circumstances will admit ; and that no such Grant shall be valid or effectual unless the same shall contain a Specification of the Lands so alloted and appropriated, in respct of the Lands to be thereby granted ; and that such Lands, so allotted and appropriated, shall be, as nearly as the Circumstances and Nature of the Case will admit, of the like Quality as the Lands in respect of which the same are so allotted and appropriated, and shall be, as nearly as the same can be estimated at the Time of making such Grant, equal in Value to the Seventh Part of the Lands so granted.

and the Rents arising from such Allotments to be applicable to that Purpose solely.

XXXVII. And be it further enacted by the Authority aforesaid, That all and every the Rents, Profits or Emoluments, which may at any Time arise from such Lands so allotted and appropriated as aforesaid, shall be applicable solely to the Maintenance and Support of a Protestant Clergy within the Province in which the same shall be situated, and to no other Use or Purpose whatever.

His Majesty may authorize the Governor, with the Advice of the Executive Council, to erect Parsonages, and endow them;

XXXVIII. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize the Governor or Lieutenant Governor of each of the said Provinces respectively, or the Person administering the Government therein, from Time to Time, with the Advice of such Executive Council as shall have been appointed by His Majesty, His Heirs or Successors, within such Province, for the Affairs thereof, to constitute and erect, within every Township or Parish which now is or hereafter may be formed, constituted, or erected within such Province, One or more Parsonage or Rectory, or Parsonages or Rectories, according to the Establishment of the Church of *England* ; and from Time to Time, by an Instrument under the Great Seal of such Province, to endow every such Parsonage or Rectory with so much or such Part of the Lands so allotted and appropriated as aforesaid, in respect of any Lands within such Township or

Parish, which shall have been granted subsequent to the Commencement of this Act, or of such Lands as may have been allotted and appropriated for the same Purpose, by or in virtue of any Instruction which may be given by His Majesty, in respect of any Lands granted by His Majesty before the Commencement of this Act, as such Governor, Lieutenant Governor, or Person administering the Government, shall, with the Advice of the said Executive Council, judge to be expedient under the then existing Circumstances of such Township or Parish.

and the Governor to present Incumbents to them, who are to enjoy the same, as Incumbents in *England*.

XXXIX. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize the Governor, Lieutenant Governor, or Person administering the Government of each of the said Provinces respectively, to present to every such Parsonage or Rectory an Incumbent or Minister of the Church of *England*, who shall have been duly ordained according to the Rites of the said Church, and to supply from Time to Time such Vacancies as may happen therein ; and that every Person so presented to any such Parsonage or Rectory, shall hold and enjoy the same, and all Rights, Profits, and Emoluments thereunto belonging or granted, as fully and amply, and in the same Manner, and on the same Terms and Conditions, and liable to the Performance of the same Duties, as the Incumbent of a Parsonage or Rectory in *England*.

Presentations to Parsonages, and the Enjoyment of them, to be subject to the Jurisdiction granted to the Bishop of *Nova Scotia*, &c.

XL. Provided always, and be it further enacted by the Authority aforesaid, That every such Presentation of an Incumbent or Minister to any such Parsonage or Rectory, and also the Enjoyment of any such Parsonage or Rectory, and of the Rights, Profits, and Emoluments thereof, by any such Incumbent or Minister, shall be subject and liable to all Rights of Institution, and all other Spiritual and Ecclesiastical Jurisdiction and Authority, which have been lawfully granted by His Majesty's Royal Letters Patent to the Bishop of *Nova Scotia*,[1] or which may hereafter, by His Majesty's Royal Authority, be lawfully granted or appointed to be administered and executed within the said Province, or either of them respectively, by the said Bishop of *Nova Scotia*, or any other Person or Persons, according to the Laws and Canons of the Church of *England*, which are lawfully made and received in *England*.

Provisions respecting the Allotment of Lands for the Support of a Protestant

XLI. Provided always, and be it further enacted by the Authority aforesaid, That the several Provisions herein-before contained, respecting the Allotment and Appropriation of Lands for the Support of a Protestant Clergy within the said Provinces,

[1] See Instructions to Lord Dorchester of Aug. 25th, 1787, giving the Bishop of Nova Scotia ecclesiastical jurisdiction throughout British North America, p. 838.

Clergy, &c. may be varied or repealed by the Legislative Council and Assembly.

and also respecting the constituting, erecting, and endowing Parsonages and Rectories within the said Provinces, and also respecting the Presentation of Incumbents or Ministers to the same, and also respecting the Manner in which such Incumbents or Ministers shall hold and enjoy the same, shall be subject to be varied or repealed by any express Provisions for that Purpose, contained in any Act or Acts which may be passed by the Legislative Council and Assembly of the said Provinces respectively, and assented to by His Majesty, His Heirs or Successors, under the Restriction herein-after provided.

Acts of the Legislative Council and Assembly, containing Provisions to the Effect herein mentioned to be laid before Parliament, previous to receiving His Majesty's Assent, &c.

XLII. Provided nevertheless, and be it further enacted by the Authority aforesaid, That whenever any Act or Acts shall be passed by the Legislative Council and Assembly of either of the said Provinces, containing any Provisions to vary or repeal the above-recited Declaration and Provision contained in the said Act passed in the Fourteenth Year of the Reign of His present Majesty ; or to vary or repeal the above-recited Provision contained in His Majesty's Royal Instructions, given on the Third Day of *January*, in the Year of our Lord One thousand seven hundred and seventy-five, to the said *Guy Carleton* Esquire, now Lord *Dorchester;* or to vary or repeal the Provisions herein-before contained for continuing the Force and Effect of the said Declaration and Provisions; or to vary or repeal any of the several Provisions herein-before contained repsecting the Allotment and Appropriation of Lands for the Support of a Protestant Clergy within the said Provinces ; or respecting the constituting, erecting, or endowing Parsonages or Rectories within the said Provinces ; or respecting the Presentation of Incumbents or Ministers to the same ; or respecting the Manner in which such Incumbents or Ministers shall hold and enjoy the same : And also that whenever any Act or Acts shall be so passed, containing any Provisions which shall in any Manner relate to or affect the Enjoyment or Exercise of any Religious Form or Mode of Worship ; or shall impose or create any Penalties, Burthens, Disabilities, or Disqualifications in respect of the same ; or shall in any Manner relate to or affect the Payment, Recovery, or Enjoyment of any of the accustomed Dues or Rights herein-before mentioned ; or shall in any Manner relate to the granting, imposing, or recovering any other Dues, or Stipends, or Emoluments whatever, to be paid to or for the Use of any Minister, Priest, Ecclesiastick, or Teacher, according to any Religious Form or Mode of Worship, in respect of his said Office or Function ; or shall in any Manner relate to or affect the Establishment or Discipline of the Church of *England*, amongst the Ministers and Members thereof within the said Provinces ;

or shall in any Manner relate to or affect the King's Prerogative touching the granting the Waste Lands of the Crown within the said Provinces ; every such Act or Acts shall, previous to any Declaration or Signification of the King's Assent thereto, be laid before both Houses of Parliament in *Great Britain* ; and that it shall not be lawful for His Majesty, His Heirs or Successors, to signify His or their Assent to any such Act or Acts, until Thirty Days after the same shall have been laid before the said Houses, or to assent to any such Act or Acts, in case either House of Parliament shall, within the said Thirty Days, address His Majesty, His Heirs or Successors, to withhold His or their Assent from such Act or Acts ; and that no such Act shall be valid or effectual to any of the said Purposes, within either of the said Provinces, unless the Legislative Council and Assembly of such Province shall, in the Session in which the same shall have been passed by them, have presented to the Governor, Lieutenant Governor, or Person administering the Government of such Province, an Address or Addresses, specifying that such Act contains Provisions for some of the said Purposes hereinbefore specially described, and desiring that, in order to give Effect to the same, such Act should be transmitted to *England* without Delay, for the Purpose of being laid before Parliament previous to the Signification of His Majesty's Assent thereto.

Lands in *Upper Canada* to be granted in Free and Common Soccage, and also in *Lower Canada* if desired.

XLIII. And be it further enacted by the Authority aforesaid, That all Lands which shall be hereafter granted within the said Province of *Upper Canada* shall be granted in Free and Common Soccage, in like Manner as Lands are now holden in Free and Common Soccage, in that Part of *Great Britain* called *England* ; and that in every Case where Lands shall be hereafter granted within the said Province of *Lower Canada*, and where the Grantee thereof shall desire the same to be granted in Free and Common Soccage, the same shall be so granted; but subject nevertheless to such Alterations, with respect to the Nature and Consequences of such Tenure of Free and Common Soccage, as may be established by any Law or Laws which may be made by His Majesty, His Heirs or Successors, by and with the Advice and Consent of the Legislative Council and Assembly of the Province.

Persons holding Lands in *Upper Canada* may have fresh Grants.

XLIV. And be it further enacted by the Authority aforesaid, That if any Person or Persons holding any Lands in the said Province of *Upper Canada*, by virtue of any Certificate of Occupation derived under the Authority of the Governor and Council of the Province of *Quebec*, and having Power and Authority to alienate the same, shall at any Time, from and after the Commencement of this Act, surrender the same into the Hands

of His Majesty, His Heirs or Successors, by Petition to the Governor or Lieutenant Governor, or Person administering the Government of the said Province, setting forth that he, she, or they is or are desirous of holding the same in Free and Common Soccage, such Governor or Lieutenant Governor, or Person administering the Government, shall thereupon cause a fresh Grant to be made to such Person or Persons of such Lands, to be holden in Free and Common Soccage.

Such fresh Grants, not to bar any Right or Title to the Lands.

XLV. Provided nevertheless, and be it further enacted by the Authority aforesaid, That such Surrender and Grant shall not avoid or bar any Right or Title to any such Lands so surrendered, or any Interest in the same, to which any Person or Persons surrendering the same, shall have been entitled, either in Possession, Remainder, or Reversion, or otherwise, at the Time of such Surrender ; but that every such Surrender and Grant shall be made subject to every such Right, Title, and Interest, and that every such Right, Title, or Interest shall be as valid and effectual as if such Surrender and Grant had never been made.

18 *Geo.* III, Cap. 12, recited.

XLVI. And whereas by an Act passed in the Eighteenth Year of the Reign of His present Majesty, intituled, *An Act for removing all Doubts and Apprehensions concerning Taxation by the Parliament of* Great Britain, *in any of the Colonies, Provinces, and Plantations in* North America, *and the* West Indies ; *and for repealing so much of an Act, made in the Seventh Year of the Reign of His present Majesty, as imposes a Duty on Tea imported from* Great Britain *into any Colony or Plantation in* America, *or relates thereto* it has been declared, "That the King "and Parliament of *Great Britain* will not impose any Duty, Tax, "or Assessment whatever, payable in any of His Majesty's "Colonies, Provinces, and Plantations in *North America* or the "*West Indies*, except only such Duties as it may be expedient "to impose for the Regulation of Commerce, the Net Produce "of such Duties to be always paid and applied to and for the "Use of the Colony, Province, or Plantation in which the same "shall be respectively levied, in such Manner as other Duties "collected by the Authority of the respective General Courts or "General Assemblies of such Colonies, Provinces, or Plantations "are ordinarily paid and applied :"[1] And whereas it is necessary, for the general Benefit of the *British* Empire, that such Power of Regulation of Commerce should continue to be exercised by His Majesty, His Heirs or Successors, and the Parliament of *Great Britain*, subject nevertheless to the Condition hereinbefore recited, with respect to the Application of any Duties

[1] See Statutes at Large, vol. 32, p. 4.

This Act not to prevent the Operation of any Act of Parliament, establishing Prohibitions or imposing Duties for the Regulation of Navigation and Commerce, *etc.*

which may be imposed for that Purpose : Be it therefore enacted by the Authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend, to prevent or affect the Execution of any Law which hath been or shall at any Time be made by His Majesty, His Heirs or Successors, and the Parliament of *Great Britain*, for establishing Regulations of Prohibitions, or for imposing, levying, or collecting Duties for the Regulation of Navigation, or for the Regulation of the Commerce to be carried on between the said Two Provinces, or between either of the said Provinces and any other Part of His Majesty's Dominions, or between either of the said Provinces and any Foreign Country or State, or for appointing and directing the Payment of Drawbacks of such Duties so imposed, or to give to His Majesty, His Heirs or Successors, any Power or Authority, by and with the Advice and Consent of such Legislative Councils and Assemblies respectively, to vary or repeal any such Law or Laws, or any Part thereof, or in any Manner to prevent or obstruct the Execution thereof.

Such Duties to be applied to the Use of the respective Provinces.

XLVII. Provided always, and be it enacted by the Authority aforesaid, That the Net Produce of all Duties which shall be so imposed shall at all Times hereafter be applied to and for the Use of each of the said Provinces respectively, and in such Manner only as shall be directed by any Law or Laws which may be made by His Majesty, His Heirs or Successors, by and with the Advice and Consent of the Legislative Council and Assembly of such Province.

His Majesty in Council to fix and declare the Commencement of this Act, &c.

XLVIII. And whereas; by Reason of the Distance of the said Provinces from this Country, and of the Change to be made by this Act in the Government thereof, it may be necessary that there should be some Interval of Time between the Notification of this Act to the said Provinces respectively, and the Day of its Commencement within the said Provinces respectively : Be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, with the Advice of His Privy Council, to fix and declare, or to authorize the Governor or Lieutenant Governor of the Province of *Quebec*, or the Person administering the Government there, to fix and declare the Day of the Commencement of this Act within the said Provinces respectively, provided that such Day shall not be later than the Thirty-first Day of *December* in the Year of our Lord One thousand seven hundred and ninety-one.

Time for issuing the Writs of Summons and Election,

XLIX. And be it further enacted by the Authority aforesaid, That the Time to be fixed by His Majesty, His Heirs or Successors, or under his or their Authority, by the Governor,

&c. not to be later than *Dec.* 31, 1792.

Lieutenant Governor, or Person administering the Government in each of the said Provinces respectively, for issuing the Writs of Summons and Elections, and calling together the Legislative Councils and Assemblies of each of the said Provinces respectively, shall not be later than the Thirty-first Day of *December* in the Year of our Lord One thousand seven hundred and ninety-two.

Between the Commencement of this Act, and the First Meeting of the Legislative Council and Assembly temporary Laws may be made.

L. Provided always, and be it further enacted by the Authority aforesaid, That during such Interval as may happen between the Commencement of this Act, within the said Provinces respectively, and the First Meeting of the Legislative Council and Assembly of each of the said Provinces respectively, it shall and may be lawful for the Governor or Lieutenant Governor of such Province, or for the Person administering the Government therein, with the Consent of the major Part of such Executive Council as shall be appointed by His Majesty for the Affairs of such Province, to make temporary Laws and Ordinances for the good Government, Peace, and Welfare of such Province, in the same Manner, and under the same Restrictions, as such Laws or Ordinances might have been made by the Council for the Affairs of the Province of *Quebec*, constituted by virtue of the above-mentioned Act of the Fourteenth Year of the Reign of His present Majesty ; and that such temporary Laws or Ordinances shall be valid and binding within such Province, until the Expiration of Six Months after the Legislative Council and Assembly of such Province shall have been first assembled by virtue of and under the Authority of this Act ; subject nevertheless to be sooner repealed or varied by any Law or Laws which may be made by His Majesty, His Heirs or Successors, by and with the Advice and Consent of the said Legislative Council and Assembly.

FINIS.

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